



Crime and Corruption Commission
QUEENSLAND

December 2016

Publicising allegations of corrupt conduct: Is it in the public interest?

Final report



Publicising allegations of corrupt conduct: Is it in the public interest?

Final report

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**Crime and Corruption
Commission**

QUEENSLAND

12 December 2016

The Honourable Peter Wellington MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with Section 69(1)(a) of the *Crime and Corruption Act 2001*, the Crime and Corruption Commission hereby furnishes to you its report, *Publicising allegations of corrupt conduct: Is it in the public interest? – Final report*.

The Commission has adopted the report.

Yours sincerely

A J MacSporran QC
Chairperson, CCC

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Abbreviations

CCC	Crime and Corruption Commission
CC Act	<i>Crime and Corruption Act 2001</i> (Qld)
CCM Act	<i>Corruption, Crime and Misconduct Act 2003</i> (WA)
CMC	Crime and Misconduct Commission (Qld)
IBAC	Independent Broad-based Anti-corruption Commission (Vic)
IBAC Act	<i>Independent Broad-Based Anti-corruption Commission Act 2011</i> (Vic)
ICAC SA	Independent Commissioner Against Corruption (SA)
ICAC Act	<i>Independent Commissioner Against Corruption Act 2012</i> (SA)
ICAC NSW	Independent Commission Against Corruption (NSW)
ICAC Act	<i>Independent Commission Against Corruption Act 1988</i> (NSW)
IP Act	<i>Information Privacy Act 2009</i> (Qld)
OPI	Office for Public Integrity (SA)
PCJC	Parliamentary Criminal Justice Committee
PCMC	Parliamentary Crime and Misconduct Committee
PID Act	<i>Public Interest Disclosure Act 2010</i> (Qld)
RTI Act	<i>Right to Information Act 2009</i> (Qld)
s.	section
ss.	sections
Sch.	Schedule

Summary and recommendation

1. Given its central role in dealing with corruption in Queensland, in June 2016 the CCC decided to examine whether it is in the public interest to publicise allegations of corrupt conduct and, if it is not, what legislative or other options are available to prevent this.
2. The CCC released a discussion paper titled *Making allegations of corrupt conduct public: Is it in the public interest?* and invited public submissions. In total, 82 submissions were received.
3. The CCC held a public forum on 6 and 7 October 2016 to further explore the issues raised in submissions and possible solutions. Twenty-two people, whose opinions represented the range of views put forward in the submissions, participated in the public forum.
4. The CCC also reviewed relevant legislation, previous reports and relevant existing CCC data, and conducted internal focus groups with CCC assessment and investigation staff to explore the impact of publicity on CCC processes.
5. The Inquiry received submissions that supported publicising allegations and submissions that opposed the practice.
6. In general, those in favour of publicising held the position that public discussion and debate are important elements of open, transparent and accountable government, and that publicising allegations of corruption has led to the exposure of corruption.
7. Those who did not support the publicising of allegations noted the potential for the practice to negatively affect the CCC's ability to detect and investigate allegations of corruption, to damage a person's reputation and damage the public's trust in their institutions of government.
8. Despite these different views, all submitters were in favour of a strong, corruption-resistant system of government and opposed any measures which may weaken Queensland's approach. The CCC agrees with this basic proposition.
9. The CCC, having carefully considered all of the information provided to the Inquiry, is of the view that, with one exception, there should be no change to the law. The exception concerns publicising allegations of corruption against a councillor or candidate in the lead-up to local government elections. In this area in particular, CCC data indicates that a large number of allegations received by the CCC are baseless and merely designed to effect electoral damage on political opponents.
10. To address this issue, the CCC recommends the government consider making it an offence for any person to publicise allegations of corrupt conduct against a councillor or candidate during a local government election period, without first notifying the CCC and allowing the CCC at least three months to determine whether the allegations have merit.

11. This “blackout” period does not mean that corrupt public officials will not be held to account. The CCC will continue to prioritise, in the public interest, the assessment and investigation of allegations against councillors, mayors and candidates. While there may be a delay while the allegation is investigated and progresses through the court, councillors and mayors who are convicted of a criminal offence may be removed from office.
12. To support this reform, the CCC will make better use of existing provisions under the CC Act and continue to improve the transparency and accountability of the agency.

Recommendation (paragraph 195)

The CCC recommends the government consider making it an offence for any person to publicise:

- a) allegations of corrupt conduct against a councillor or candidate during a local government election period; or
- b) the fact that a complaint (whether or not it involves corrupt conduct) has been, will be or may be made to the CCC against a councillor or candidate during a local government election period without first notifying the CCC and allowing the CCC at least three months to determine whether the allegations have merit.

Objectives of the Inquiry

13. Corrupt activities are not routinely carried out in public. Rather, they are carried out behind closed doors and involve secrecy and deception.
14. Consequently, the Crime and Corruption Commission (CCC), as the primary agency responsible for dealing with corruption in Queensland, requires people who have witnessed corruption, or suspect that it has occurred, to report it. To support this approach, public sector employees have an obligation to report corrupt conduct.¹
15. In some instances, allegations are also publicised in the media. In today's environment, traditional vehicles like print, television and radio are augmented by digital and new media. Information, in the context of this report – untested allegations of corrupt conduct – almost instantly reaches a mass audience and remains on the public record in perpetuity.
16. Whether publicising allegations of corrupt conduct is in the public interest has been the subject of debate since 1992.² That debate has considered the potentially detrimental effects of publicising allegations of corrupt conduct, including impacting the CCC's ability to perform its corruption function, reputational damage to people alleged to have engaged in corrupt conduct, and their ability to have a fair trial. Similarly, that debate considered the importance of freedom of communication and promoting opportunities for open, transparent and accountable government. The fact that these previous examinations resulted in different conclusions without an effective solution demonstrates the complexity of the issue.
17. Given its central role in dealing with corruption in Queensland, the CCC decided to re-examine the issue. Specifically, the Inquiry sought to examine whether, on balance, 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.

¹ *Crime and Corruption Act 2001* (QLD) s 37, 38; *Public Sector Ethics Act 1994* (Qld) s 12; *Code of Conduct for the Public Service* 19 January 2011.

² See Crime and Corruption Commission, Discussion Paper, *Making allegations of corrupt conduct public: Is it in the public interest?* (June 2016), for full list of debates <http://www.ccc.qld.gov.au/research-and-publications/publishing-allegations/pacc>.

Conduct of the Inquiry

18. The CCC considered it important that the examination of the issue was conducted in a transparent way and provided opportunities for interested stakeholders to provide their views.

Public submissions

19. In June 2016, the CCC released a discussion paper titled *Making allegations of corrupt conduct public: Is it in the public interest?* and invited public submissions.³ The discussion paper identified five key areas considered central to the issue:
- Open, transparent and accountable government
 - Freedom of speech
 - Reputation of alleged subject officers
 - Fair trial
 - Effectiveness of the CCC.
20. The CCC advertised the call for submissions by:
- writing to key stakeholders, Queensland government departments and local councils, interest groups and academics
 - advertising via media in regional and metropolitan areas throughout Queensland
 - the CCC Chairperson Mr Alan MacSporran QC holding a press conference to announce the CCC was examining this issue
 - publishing the discussion paper and calling for public submissions on the CCC website.
21. The closing date for submissions was 30 June 2016, however, the CCC accepted submissions until 21 October 2016.
22. In total, the CCC received 82 submissions (Appendix 1). All submissions that were not confidential were published on the CCC website. Some submissions were redacted in line with the criteria set out on page seven of the Discussion Paper – *How the CCC handles submissions*.⁴

Public forum

23. The CCC held a public forum on 6 and 7 October 2016 at the CCC's Fortitude Valley premises. The purpose of the public forum was to further explore the issues raised in submissions and possible solutions. The public forum panel consisted of:

³ Crime and Corruption Commission, *Making allegations of corrupt conduct public: is it in the public interest?* (2016).

⁴ Ibid.

- Mr Alan MacSporran QC, CCC Chairperson
 - Mr Marshall Irwin, CCC Ordinary Commissioner
 - Mr Richard Bingham, Queensland Integrity Commissioner
 - Dr Rebecca Denning, CCC Director of Policy and Research.
24. Time did not allow for all submitters to participate in the two-day public forum.⁵ The CCC invited 22 people (Appendix 2), whose opinions represented the range of views put forward in the submissions, to speak at the public forum. Some speakers reflected their own views, whereas others presented the views of public sector agencies or their organisations.
25. Prior to the public forum, speakers were provided with the following questions to help them prepare for the public forum:
- In your view, is making allegations of corrupt conduct public in the public interest?
 - What factors did you consider in arriving at your position?
 - What are the positive outcomes associated with your position?
 - What are the negative outcomes associated with your position and how can these be eliminated, minimised or managed?
 - What changes to laws, policies, practices or systems are required to support your position?
 - What are possible barriers to the successful implementation and operation of these reforms, and how can these be eliminated, minimised or managed?
 - What are the possible unintended consequences of these reforms and how can these be eliminated, minimised or managed?
26. Over the two days, approximately 50 people attended the forum and over 500 people viewed the live stream accessed via the CCC website. To make the public forum accessible to as many interested people as possible, the forum was live-streamed and recorded. The CCC uploaded speaker transcripts and videos on 28 October 2016.⁶

Other information sources

27. The CCC reviewed relevant legislation, previous reports and relevant existing CCC data.
28. The CCC also conducted internal focus groups with CCC assessment and investigation staff to explore the impact of publicity on CCC processes.

⁵ Twenty-eight submissions were received after the public forum.

⁶ Crime and Corruption Commission <<http://www.ccc.qld.gov.au/research-and-publications/publishing-allegations/transcripts-video>>.

The current approach

Queensland's legislative framework

29. In Queensland, like other Australian jurisdictions, the legislative framework relating to publicising allegations of corrupt conduct includes a number of public interest constraints within the power of the legislature.⁷ Constraints upon the publicising of allegations of corrupt conduct derive not only from the *Crime and Corruption Act 2001* (CC Act) but also other Queensland laws and laws of the Commonwealth, States and Territories.⁸ These constraints comply with limits upon legislative power protecting the people of Australia from laws which improperly restrict their freedom of communication about government and political matters implied by the Commonwealth Constitution.

Crime and Corruption Act 2001

30. The CC Act defines corrupt conduct⁹ and sets out the CCC's corruption purposes,¹⁰ functions¹¹ and powers.¹² The Act has a number of provisions that deal with the publication of information and confidentiality.¹³
31. Anyone may make a complaint of corrupt conduct to the CCC and to the chief executive officers (CEOs) of units of public administration so they may be dealt with under the CC Act.¹⁴ People who do so have substantial legal protections.¹⁵ The CC Act does not expressly prevent people from complaining about corrupt conduct to someone else, including media. If they choose to do so, however, they do not necessarily enjoy any legal protection for disclosing information which is defamatory or where the law restricts disclosure on grounds of secrecy or confidentiality, including commercial-in-confidence.
32. While the CC Act does not expressly prevent people from publishing information that a complaint of corrupt conduct has been or might be made to the CCC, the CCC has power to constrain them from doing so in certain circumstances. This is especially important when disclosure might compromise the performance of the CCC's functions. The CCC must at all times act having regard to the purposes of the CC Act and the importance of protecting the public interest.¹⁶ This helps inform CCC decision making about when to apply or enforce constraints on the disclosure of information. The CCC has power to do all things necessary or convenient to be

⁷ *Acts Interpretation Act 1954* (Qld) s 9(1).

⁸ *Public Interest Disclosure Act 2010* (QLD); *Right to Information Act 2009* (Qld); *Information Privacy Act 2009* (Qld); *Defamation Act 2005* (Qld); *Anti-Discrimination Act 1991* (Qld); *Australian Rights Commission Act 1986* (Cth), *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and *Sex Discrimination Act 1984* (Cth).

⁹ *CC Act* (Qld), ch 1 pt 4, divs 1–4.

¹⁰ *Ibid* ss 4, 5.

¹¹ *Ibid* ss 33, 34.

¹² *Ibid* chs 2 - pt 3, 3, 4, 5, 7.

¹³ *Ibid* ss 60, 62, 64, 65, 69, 84, 89, 177, 180(3), 200A, 202, 213, 331.

¹⁴ *Ibid* ss 36(1)(2), 38, 39, 216, 216A

¹⁵ *Ibid* ss 211, 212, 213, 343.

¹⁶ *Ibid* s 57.

done for or in connection with, or reasonably incidental to, the performance of its functions,¹⁷ including making decisions about disclosing information about corrupt conduct.

33. In the performance of corrupt conduct functions, the CCC frequently uses its specific powers to ensure that information given to others is given on the understanding, express or implied, that it is confidential.¹⁸ The CCC may and does issue directions¹⁹ and guidelines²⁰ to the CEOs of units of public administration that complaints be kept confidential. In many cases where compulsory processes are involved, information related to the performance of those powers is deemed confidential until the CCC or a court expressly orders otherwise.²¹ All these constraints upon the disclosure of information about complaints of corrupt conduct may be enforced variously by criminal, civil and administrative action.
34. The CC Act gives priority to the public interest in constraining the disclosure of information about corrupt conduct. Hence the CCC cannot be required to disclose information about corrupt conduct to a court unless, among other things, it is necessary for a prosecution started as a result of an investigation conducted by the CCC.²²
35. To protect the public interest the CC Act creates an offence to prevent people making repeated complaints about the same or substantially the same matter after having been notified by the CCC that their complaint is frivolous.²³ The Act also creates an offence to make complaints which are vexatious, not in good faith, mischievous, reckless or malicious;²⁴ and to state anything, or give documents containing information that a person knows is false or misleading in a material particular.²⁵
36. Subject to Commonwealth law, parliamentary privilege and non-publication orders made by the CCC and the courts, the CCC may publish information about corrupt conduct for the proper performance of its functions and those of units of public administration and law enforcement agencies, or to any other person if appropriate in the public interest.²⁶

Public Interest Disclosure Act 2010 (Qld)

37. The *Public Interest Disclosure Act 2010* (Qld) (PID Act) facilitates disclosure, in the public interest, of information about wrongdoing in the public sector, and provides protection for those who make disclosures. People who do so enjoy substantial legal protections.
38. The PID Act broadly defines confidential information which may not be disclosed other than for specific purposes related to, or authorised by, the Act or is necessary to provide for the safety

¹⁷ Ibid s 174(1).

¹⁸ Ibid s 213.

¹⁹ Ibid ss 46(3), 48.

²⁰ Crime and Corruption Commission (Qld), *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector* (2016) <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>.

²¹ CC Act (Qld), ss 84, 89, 177, 180(3), 200A, 202.

²² Section 213(4)-(b)(ii) CC Act.

²³ Ibid s 216.

²⁴ Ibid s 216A.

²⁵ Ibid ss 217, 218.

²⁶ Ibid ss 57, 60, 62, 64, 65, 69.

and welfare of a person.²⁷ These constraints apply to all information which is part of a public interest disclosure under the PID Act.

39. A person who makes a complaint of corrupt conduct which is also a public interest disclosure under the PID Act may give a journalist substantially the same information, if the CCC (or a public official who has responsibility for dealing with the complaint) decides not to investigate or deal with the complaint, investigates the complaint but does not recommend the taking of any action, or does not notify the person within six months as to whether the complaint is to be investigated or dealt with.²⁸ These provisions give priority to the public interest in constraining the disclosure of information about corrupt conduct while they are being properly dealt with.²⁹ A person who makes a premature disclosure to a journalist does not have legal protection for the disclosure.

Right to Information Act 2009 (Qld)

40. The *Right to Information Act 2009 (Qld)* (RTI Act) gives the public a right to apply for access to information in the government's possession or control. Access can be refused on a number of grounds, including that the information is exempt from release or its disclosure would on balance be contrary to the public interest.³⁰ Information obtained, used or prepared for an assessment or investigation of a corrupt conduct complaint by the CCC is exempt from release under the RTI Act until the investigation has been completed.³¹ However, the CCC is still able to release this type of information if it chooses to, even though it would be entitled to refuse the application for access.³²

Information Privacy Act 2009 (Qld)

41. The *Information Privacy Act 2009 (Qld)* (IP Act) provides for the protection of personal information collected and held by Queensland government agencies, including the CCC. The IP Act regulates what agencies must and may do with personal information and imposes limits on the right of an agency to publish personal information about an individual. However, personal information arising out of a complaint of corrupt conduct or its investigation under the CC Act is exempt from these statutory limits on publication.³³

Defamation Act 2005 (Qld)

42. The law of defamation constrains speech in order to protect a person from an attack on their reputation.³⁴ An attack on reputation diminishes in some respect the esteem in which a person is held by the community.³⁵
43. The *Defamation Act 2005 (Qld)* seeks to promote uniform laws for the tort of defamation in Australia. The tort of defamation is actionable on the mere publication of defamatory matter

²⁷ *Public Interest Disclosure Act 2010 (Qld)* s 65.

²⁸ *Ibid* s 20.

²⁹ *Ibid* s 3; Explanatory Notes p 4.

³⁰ *Right to Information Act 2009* s 47.

³¹ *Ibid* ss 47, 48, sch 3, s 10(4).

³² *Ibid* s 47(2)(b).

³³ *Information Privacy Act 2009 (Qld)* s 16, sch 1, section 3(b)

³⁴ Patrick George, *Defamation Law in Australia* (Lexisnexis Butterworths, 2nd ed, 2006) 93.

³⁵ *Ibid* 97.

except to the extent that the law provides otherwise.³⁶ The Criminal Code (Qld) provides for an offence of criminal defamation.³⁷ The criminal offence requires proof beyond reasonable doubt that the publisher had the necessary state of mind with respect to several elements of the offence. This is frequently very difficult to prove. Consequently criminal prosecutions for defamation are rare in modern times.

44. Criminal defamation, under the Criminal Code (Qld), is concerned with protecting against outrageous attacks on reputation which are known to be false without regard for the serious harm caused by the publication.
45. There are several statutory defences to the tort of defamation, including the separate defences of qualified privilege and honest opinion. The publication of defamatory matter to people who have an apparent interest in the information is not constrained when the conduct of the person who publishes the matter was reasonable in the circumstances³⁸ or when the person is expressing an honest opinion based on proper material that is substantially true in relation to a matter of public interest.³⁹
46. In *Lange v Australian Broadcasting Corporation* the High Court stated that publishing defamatory material will not be reasonable unless the publisher has reasonable grounds for believing the defamatory imputation was true, took proper steps so far as they were reasonably open to verify the accuracy of the material, and did not believe the imputation to be untrue. The conduct will also not be reasonable unless the publisher has sought a response from the person defamed and published the response made (if any) except in cases where the seeking of publication of a response was not practicable or it was unnecessary to give the plaintiff an opportunity to respond.⁴⁰
47. Of course, the extent to which a person might be able to make reasonable inquiries to verify the accuracy of the material might be severely limited by public interest constraints upon the publicising of a corrupt conduct complaint or investigation which are appropriately imposed by other statutes. This raises concerns about the appropriate balancing of the public interest in light of the specific public interest purposes sought to be achieved by various legislation.

Anti-Discrimination Act 1991 (Qld)

48. The *Anti-Discrimination Act 1991* (Qld) contains discretionary powers to protect interested parties from reputational damage and to prevent discrimination investigations and proceedings from being prejudiced.
49. At any time before discrimination complaints are referred to the Queensland Civil and Administrative Tribunal (the Tribunal) for hearing, the Queensland Anti-Discrimination Commissioner may suppress the identities of people involved in the proceedings such as

³⁶ *Defamation Act 2005* (Qld) s 7(2) and Patrick George, *Defamation Law in Australia* (Lexisnexis Butterworths, 2nd ed, 2006) 125.

³⁷ *Criminal Code* (Qld) s 365.

³⁸ *Defamation Act 2005* (Qld) s 30.

³⁹ *Defamation Act 2005* (Qld) s 31.

⁴⁰ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

complainants, respondents, witnesses and informants.⁴¹ The Commissioner, or complainants, may also apply to the Tribunal pre-referral for an order prohibiting a person from prejudicing an investigation or proceeding. The Tribunal may hear prohibition applications in the absence of the subjects of the applications; and may later vary, or revoke, any prohibition orders it might make.⁴² The Tribunal may also suppress peoples' identities post-referral.⁴³

50. The possibility of criminal sanctions encourages people to comply with suppression and prohibition orders.⁴⁴ If suppression orders are disobeyed, the courts may continue the orders when dealing with the offenders.⁴⁵

Other relevant Commonwealth laws

51. The *Australian Human Rights Commission Act 1986* (Cth), *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and *Sex Discrimination Act 1984* (Cth) generally constrain people from discriminating against others on various grounds. However, any constraints on free speech are not absolute and breaches are not criminalised. For example, the *Racial Discrimination Act 1975* (Cth) prohibits racial vilification, but does not apply to fair and accurate reports, made reasonably and in good faith, about matters of public interest.⁴⁶ If this prohibition is breached, offenders are not prosecuted criminally, but are liable to civil remedies.⁴⁷
52. The Australian Human Rights Commission (AHRC) may suppress the identities of people involved in some, but not all, discrimination proceedings before the Commission.⁴⁸ However, information may be published about age discrimination, disability discrimination and sex discrimination complaints (except for "private information" about the affairs of people involved in discrimination complaints).
53. Possible criminal sanctions are not used to encourage compliance with suppression orders under the *Australian Human Rights Commission Act 1986* (Cth). Instead, civil remedies are available against those who contravene such orders.

Queensland's approach in practice

54. In Queensland, under the CC Act, the CCC has primary responsibility for dealing with allegations of corrupt conduct.⁴⁹
55. Much of the information about suspected corrupt conduct or police misconduct received by the CCC comes from members of the public and from public officials. This includes CEOs of public

⁴¹ *Anti-Discrimination Act 1991* (Qld), s 145.

⁴² *Ibid*, s 144.

⁴³ *Ibid*, s 191.

⁴⁴ *Ibid* ss 145, 191, 219, 223.

⁴⁵ *Ibid* s 226A.

⁴⁶ *Racial Discrimination Act 1975* (Cth) ss 18C, 18D.

⁴⁷ *Eatock v Bolt* [2011] FCA 1103; *Eatock v Bolt (No 2)* [2011] FCA 1180.

⁴⁸ *Australian Human Rights Commission Act 1986* (Cth) s 14(2).

⁴⁹ *CC Act* (Qld) s 45(1).

agencies who are obliged to report any suspected corrupt conduct occurring within their organisations.

56. Information also comes through routine audits by the CCC, Crime Stoppers and the CCC's own intelligence activities or sources. Matters can also be referred through legal proceedings, the Coroner or a public inquiry.
57. When the CCC receives a complaint alleging corrupt conduct in the public sector, the CCC assesses how it should be handled, taking into account the particular circumstances of the case. The CCC assesses each complaint, information, notification or matter based on whether it:
- is within CCC jurisdiction; and
 - alleges corruption of a serious or systemic nature; and
 - will have a serious impact on the Queensland community; and
 - is important to the public sector or has a bearing on public confidence or order; and
 - appears to be genuine, and made in good faith.
58. The seriousness of the alleged conduct is a key consideration in the CCC's assessment and prioritisation process. A number of factors, including the public interest, influence the CCC's assessment in this regard. It is clearly in the public interest for corrupt officials who have political control or ultimate decision-making authority to be exposed and held to account. For example, all other aspects being equal, matters involving alleged corrupt conduct by an executive-level officer (i.e. Director-General, CEO, Vice Chancellor), the Legislature (and other elected officials including Mayors) or a judicial officer are considered to be more serious than matters involving allegedly corrupt public officers. Politically sensitive matters, namely those which would undermine essential democratic institutions such as parliament, the courts, law enforcement, local government or proper public administration, are also considered serious.
59. Based on the assessment, the CCC may decide to:
- consistent with the devolution principle, refer the complaint to the relevant public official to deal with, subject to review or audit by the CCC⁵⁰
 - ask the relevant public official to carry out further enquiries before a final assessment is made (e.g. the complaint appears to indicate quite serious corruption, but the initial information gathered suggests that there may be an innocent explanation for what happened)
 - investigate the complaint itself
 - investigate the complaint in cooperation with the relevant public official

⁵⁰ The principle of devolution is prescribed by ss 33(b) and 34(c) of the *Crime and Corruption Act 2001*. Section 34(c) states that subject to the cooperation and public interest principles and the capacity of the agency, action to prevent and deal with corruption in an agency should generally happen in the agency. Section 46(1)(b) states that the CCC deals with a complaint about corruption by taking the action it considers most appropriate in the circumstances having regard to the principles set out in s 34. Section 46(2)(b) authorises the CCC to refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in cooperation with the CCC, subject to the CCC's monitoring role.

- refer possible criminal activity to the Queensland Police Service (where it is not investigated by the CCC)
 - take no action.
60. The CCC will retain and investigate only allegations of the most serious or systemic corrupt conduct, including those with a strong public interest element or if the relevant agency does not have the relevant capacity to handle the investigation.

Previous reviews of Queensland’s current approach

61. In 1992, the Parliamentary Criminal Justice Committee (PCJC) noted that the “confidentiality of complaints” was problematic.⁵¹ The Criminal Justice Commission (CJC) had sought a legislative amendment that would make it an offence for a person who had made a complaint, or given information to the CJC, to disclose that fact or any details of the complaint. The CJC considered the amendment necessary to protect privacy and deter complaints that were politically motivated or designed to damage a person’s reputation.
62. In 2006, the Parliamentary Crime and Misconduct Committee (PCMC) acknowledged concerns about inappropriate disclosure of allegations and public expectations of transparency and openness.⁵² This matter was raised following the extensive public attention received from the Crime and Misconduct Commission’s (CMC) Inquiry into the 2004 Gold Coast City Council election.⁵³ The PCMC considered that on balance, and having regard to the need for transparency, no legislative amendment was required to impose an obligation on people to keep the existence and nature of complaints against public officials confidential before finalisation.
63. In 2009, the PCMC again noted the confidentiality of complaints as an ongoing issue but did not support any legislative amendments.⁵⁴
64. In 2012, the PCMC examined the issue following the 2012 state election. During this election campaign, there was considerable public interest in the allegations referred to the CMC relating to candidates — in particular, the then candidate for Ashgrove, Mr Campbell Newman. The PCMC considered the ongoing requirement for openness and transparency in the CMC outweighed the need for any legislative amendments.⁵⁵

⁵¹ Parliamentary Criminal Justice Committee, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission* (Part C), Report No 18, Legislative Assembly of Queensland (1992) <<http://www.parliament.qld.gov.au/documents/committees/PCCC/1992/rpt-18-131192.pdf>>.

⁵² Parliamentary Crime and Misconduct Committee, *Three year review of the Crime and Misconduct Commission*, report no. 71, Legislative Assembly of Queensland, October 2006, <<https://www.parliament.qld.gov.au/documents/committees/PCCC/2006/three-year-review-06/Report71-3yrReview.pdf>>.

⁵³ Crime and Misconduct Commission, *Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast city council election*, CMC 2006 <<http://www.ccc.qld.gov.au/search?SearchableText=influence+and+integrity+in>>.

⁵⁴ Parliamentary Crime and Misconduct Committee, *Three yearly review of the Crime and Misconduct Commission*, Report No 79, Legislative Assembly of Queensland (2009) <<https://www.parliament.qld.gov.au/documents/committees/PCCC/2009/three-year-review-09/Report79-3yrReview.pdf>>.

⁵⁵ PCMC, *Three yearly review of the Crime and Misconduct Commission*, Report No 86, Legislative Assembly of Queensland (2012) <<https://www.parliament.qld.gov.au/documents/committees/PCCC/2011/three-year-review-11/rpt86-3YrReview.pdf>>.

65. In 2013, the government-appointed Independent Advisory Panel, comprising The Honourable Ian Callinan AC and Professor Nicholas Aroney, examined the issue and made the following recommendation:

Recommendation 8:

The law should be that it is an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the act of any investigation by the CMC subject only to three exceptions. The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it, will be permissible. The second exception should be as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure. The third is the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could occur if otherwise required by law, such as by Court processes or Court order.

The restriction upon publication or disclosure should be permanent in the case of no further action by the CMC, an absence of any finding against, or a "clearance" of a person or persons, unless that person or persons make the publication or disclosure themselves or give prior written consent to it. If, however, the investigation leads to criminal proceedings or disciplinary proceedings in QCAT, then, from the time of commencement of those proceedings, no restrictions on publication or disclosure should remain.

There should be a suitable deterrent penalty for unlawful publication or disclosure by anyone.

66. The then government accepted in principle recommendation 8, noting that the disclosure of any information about a complaint that identifies an individual may lead to irreparable damage to the subject of the complaint and his or her family or associates and also jeopardise any ongoing investigation by the CMC.⁵⁶
67. The then government also acknowledged that the release of information about a complaint may be justified in circumstances not addressed by the recommendation, including when the CMC refers the matter to another integrity agency, the complainant makes a complaint to the PCMC about the manner in which the CMC dealt with the complaint, and the complainant commences legal proceedings (such as defamation, wrongful arrest, trespass and wrongful dismissal).
68. Reflecting this position, the government recommended that the *Crime and Misconduct Act 2001* be amended to include provisions that prevent the disclosure of information about a complaint once it has been made to the CMC.
69. Although the Implementation Panel that was responsible for the further development of government-endorsed Independent Advisory Panel recommendations considered recommendation 8, the government did not progress the legislative amendment.

⁵⁶ Queensland Government response to the Parliamentary Crime and Misconduct Committee – Inquiry into the Crime and Misconduct Commission’s release and destruction of Fitzgerald Commission of Inquiry documents, The Honourable Ian Callinan AC and Professor Nicholas Aroney – Review of the *Crime and Misconduct Act 2001* and related matters, 3 July 2013, Brisbane, Queensland.

Approaches in other Australian jurisdictions

70. The interstate agencies primarily responsible for dealing with corruption have different legislative regimes.

Independent Commissioner against Corruption Act 2012 (South Australia)

71. The *Independent Commissioner against Corruption Act 2012* (South Australia) [ICAC Act (SA)] has three primary objects⁵⁷ which share similar features with the corruption purposes of the CC Act.⁵⁸
72. The ICAC Act (SA) establishes the Independent Commissioner Against Corruption (the Commissioner) with functions designed to identify and investigate corruption in public administration and the prevention or minimisation of corruption, misconduct and maladministration in public administration.⁵⁹ The Commissioner is an investigator who has no role in deciding whether a person has engaged in corrupt conduct. The Act also establishes the Office for Public Integrity [OPI (SA)] to manage complaints about public administration with a view to identifying corruption, misconduct and maladministration and ensuring that these complaints about public administration are dealt with by the most appropriate person or body.⁶⁰
73. The ICAC Act (SA) regulates the disclosure of information related to complaints for the purpose of achieving an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation.⁶¹ Constraints on the disclosure of information are either expressly stated or are left as a matter of discretion to be exercised having regard to the objects of the Act. In either case the relevant grounds for consideration are plainly linked to the Act's objectives.
74. To promote the achievement of its objectives, the ICAC Act (SA) authorises the disclosure of information to the Commissioner and the OPI (SA) for appropriate public interest purposes despite any obligation to maintain secrecy or any other restriction on the disclosure of the information.⁶²
75. The ICAC Act (SA) substantially constrains the publicising of allegations of corruption, misconduct and maladministration in public administration.⁶³ Those terms are defined by the Act⁶⁴ and taken together have a much broader scope than the definition of "corrupt conduct" under the CC Act. Under the ICAC Act (SA) the disclosure of information is essentially limited to purposes consistent with the Act's administration and enforcement, the performance of the

⁵⁷ *Independent Commissioner Against Corruption Act 2012* (SA) s 3(1)-(a)-(b)-(c).

⁵⁸ *CC Act* (Qld) ss 4, 5, 57.

⁵⁹ *ICAC Act 2012* (SA) s 3(1)(a) and pt 2.

⁶⁰ *Ibid* s 3(1)(b) and pt 3.

⁶¹ *Ibid* s 3(1)(c).

⁶² *Ibid* s 50.

⁶³ *Ibid* ss 54, 55, 56, 56A.

⁶⁴ *Ibid* s 5.

Commissioner's functions or with the authorisation of the Commissioner given in accordance with regulations made under the Act.⁶⁵

76. The Commissioner may make public statements in connection with a particular matter in the public interest having regard to stated criteria which balance the benefits for the investigation against possible risks of prejudicing the reputation of any person or potential prosecution.⁶⁶ Also, evidence or information obtained by the lawful exercise of powers under the Act may be provided to law enforcement agencies and prosecution authorities for the purposes of investigations or proceedings for criminal offences or the imposition of a penalty.⁶⁷ Similarly, evidence or information may be given to public authorities for the purposes of any disciplinary investigation or action.⁶⁸
77. Information disclosed to a person in connection with a matter subject to complaint related processes under the ICAC Act (SA) must be kept confidential unless advised by the Commissioner in writing.⁶⁹
78. The Commissioner has powers to conduct private examinations for the purposes of an investigation into corruption and people may be required to produce documents or give evidence at the examination. Accordingly, the ICAC Act (SA) includes offence provisions for disclosing confidential information related to a summons to a witness⁷⁰ or for publishing information in contravention of directions made by the person conducting the private examination of a witness under the Act.⁷¹
79. Of particular interest are the express provisions which require that the authority of the Commissioner (or a court hearing proceedings for an offence against the SA ICAC Act) be obtained before anyone may publish information by newspaper, radio, television, internet or other electronic means⁷² that could prejudice particular people associated with complaint processes under the Act.⁷³ By way of example, it is an offence to publish information tending to suggest that a person might be the subject of a complaint,⁷⁴ or to publish the fact that a person may be about to make a complaint,⁷⁵ or to publish information which might enable a person who may be about to give information or evidence under the Act to be identified or located⁷⁶, without the relevant authority.⁷⁷
80. The CCC is not aware of any successful legal challenge to the validity of laws constraining the disclosure of information related to a complaint under the ICAC Act (SA).

⁶⁵ Ibid s 54(1).

⁶⁶ Ibid s 25.

⁶⁷ Ibid s 56A (1)(a)(i).

⁶⁸ Ibid s 56A (1)(a)(ii).

⁶⁹ Ibid s 54(2)–(5).

⁷⁰ Ibid sch 2 ss 6–7.

⁷¹ Ibid sch 2 s 3(15).

⁷² This includes sharing content with the public or participating in social networking with the public.

⁷³ *ICAC Act 2012 (SA)* s 56.

⁷⁴ Ibid s 56(a).

⁷⁵ Ibid s 56(c).

⁷⁶ Ibid s 56(d).

⁷⁷ Ibid s 56.

Independent Commission Against Corruption Act 1988 (NSW)

81. Like the CCC in Queensland, the Independent Commission Against Corruption (ICAC) in New South Wales is an anti-corruption body. Both bodies have similar statutory functions and powers, but there are some fundamental differences. The CCC deals with both corrupt conduct and police misconduct; ICAC only deals with corrupt conduct.⁷⁸ Both bodies can express opinions and make recommendations, but ICAC can also make findings.⁷⁹
82. In this context, the *Independent Commission against Corruption Act 1988 (NSW)* [ICAC Act (NSW)] contains safeguards to protect interested parties from reputational damage and to prevent ICAC investigations and hearings from being prejudiced.
83. The ICAC Act (NSW) constrains ICAC officers and contractors from disclosing confidential information, except as authorised by, or under, the Act (for example, for a criminal prosecution or disciplinary action arising from an ICAC investigation; or as the ICAC Commissioner might otherwise authorise).⁸⁰ Similar constraints are imposed on any person or body to whom ICAC gives evidence or information.⁸¹
84. Prospective witnesses and informants may be constrained from disclosing that they have been required to give evidence or information to ICAC, except, for example, for them to obtain legal advice or representation in respect of the requirement.⁸²
85. Although ICAC hearings are public, the ICAC Commissioner may close any part of the hearings.⁸³ If necessary or desirable in the public interest, ICAC may suppress or limit publication of any evidence or information it receives or seizes during an investigation or hearing.⁸⁴ This power, which appears to exist whether ICAC hearings are open or closed, is intended to safeguard witnesses and informants and to prevent investigations or hearings from being prejudiced.
86. The possibility of criminal sanction encourages compliance with these various constraints.⁸⁵ Additionally, ICAC may apply to the Supreme Court of New South Wales for an injunction to restrain a person, public authority or public official from prejudicing a potential or actual investigation.⁸⁶
87. Finally, if an ICAC investigation or hearing is likely to prejudice a person's right to a fair trial, ICAC must close the investigation or hearing for the duration of the trial. This protection, however, only applies to a person who has been charged with a criminal offence that would usually be dealt with in a superior court and only after a preliminary hearing has commenced in a lower court.⁸⁷

⁷⁸ In New South Wales, the Police Integrity Commission deals with the Queensland equivalent of police misconduct [*Police Integrity Commission Act 1996 (NSW)* ss 5, 13.

⁷⁹ *ICAC Act (NSW)* ss 13(3), 13(5); *CC Act 2001 (Qld)* ss 49, 64.

⁸⁰ *ICAC Act (NSW)* s 111.

⁸¹ *Ibid* ss 14(3), 16(4), 53(6).

⁸² *Ibid* s 114.

⁸³ *Ibid* s 31A.

⁸⁴ *Ibid* s 112.

⁸⁵ *Ibid* ss 111(2), 112(2).

⁸⁶ *Ibid* s 27.

⁸⁷ *Ibid* ss 18(2), 18 (2A), 18(3).

88. The CCC is not aware of any successful legal challenge to the validity of laws constraining the disclosure of information related to a complaint under the ICAC Act (NSW).

Independent Broad-based Anti-corruption Commission Act 2011 (Vic)

89. The Victorian Independent Broad-based Anti-corruption Commission (IBAC) is established and regulated by the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* (IBAC Act).
90. IBAC receives complaints and notifications of public sector corruption and police misconduct and investigates and exposes corruption and police misconduct.
91. There are a number of provisions in the Act which impose constraints upon the ability of a complainant or IBAC itself to publish information about a complaint made to IBAC.
92. Constraints on disclosure arise where IBAC notifies a complainant that their complaint is to be investigated or referred to another agency or advises the complainant about the results of an investigation. It is an offence for a complainant to disclose this advice except in limited circumstances.⁸⁸ During an investigation, IBAC can also issue a confidentiality notice to a complainant or other person stipulating that certain information must not be disclosed.⁸⁹ The criteria for issuing such a notice is a belief on reasonable grounds that disclosure would be likely to prejudice the investigation; the safety or reputation of a person; or the fair trial of a person who has been, or may be, charged with an offence. A confidentiality notice may also be issued during a preliminary inquiry (i.e. prior to IBAC deciding whether to conduct an investigation) to a person who has been issued with a witness summons.⁹⁰
93. Constraints on IBAC officers arise from a general prohibition on disclosing information acquired in the course of performing their duties and functions unless the disclosure is otherwise in accordance with the Act.⁹¹ As well, sections 41(3) and (4B) stipulate that IBAC must not disclose information that is likely to lead to the identification of a person whose complaint to IBAC or a public sector agency constitutes an “assessable disclosure” as defined in Section 3 of the *Protected Disclosure Act 2012 (Vic)*.
94. There are also other sources of constraint. Section 129A of the IBAC Act enables a suppression order to be made prohibiting or restricting the publication of any information or evidence given during a public hearing if this is necessary to prevent prejudice or hardship to any person, including harm to their safety or reputation; or to avoid the possibility of any prejudice to legal proceedings. Similar to the provisions found in the Queensland privacy laws, section 194 of the IBAC Act provides that the *Freedom of Information Act 1982 (Vic)* does not apply to information about a complaint made to IBAC or an investigation conducted under the IBAC Act.

⁸⁸ *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* s 184.

⁸⁹ *Ibid* s 42(1).

⁹⁰ *Ibid* s 42(1A).

⁹¹ *Ibid* s 40.

95. The CCC is not aware of any successful legal challenge to the validity of laws constraining the disclosure of information related to a complaint under the IBAC Act.

Corruption, Crime and Misconduct Act 2003 (WA)

96. The main purposes of the *Corruption, Crime and Misconduct Act 2003 (WA)* [CCM Act (WA)] are similar to those of the CC Act (Qld).⁹²
97. There are some differences in the scope of the respective corruption jurisdictions for the Corruption and Crime Commission (WA) (CCC (WA)) and the CCC (Qld). For example, the terms “misconduct” and “police misconduct” in the CCM Act (WA) are similar to, but wider than, the terms “corrupt conduct” and “police misconduct” in the CC Act (Qld).⁹³ The CCM Act (WA) also refers to “serious misconduct” and “minor misconduct”.⁹⁴ These concepts are not included in the CC Act (Qld).
98. Despite these differences, the functions, powers and confidentiality provisions in respect of “serious misconduct” in the CCM Act (WA) and “corrupt conduct” in the CC Act (Qld) are similar.⁹⁵
99. The CCC is not aware of any successful legal challenge to the validity of laws constraining the disclosure of information related to a complaint under the CCM Act (WA).

⁹² *Corruption, Crime and Misconduct Act 2003 (WA)* s7A; *CC Act (Qld)* s 4(1).

⁹³ *CCM Act (WA)* ss 3-4; *CC Act (Qld)* ss 12, 15, sch 2.

⁹⁴ *CCM Act (WA)* ss 3, 4.

⁹⁵ *CCM Act (WA)* ss 18, 94-101, 137-147, 151-154; *CC Act (Qld)* ss 33-35, 45-48, 60, 62, 75-75B, 82-99, 109, 111, 176-183, 192(2A)(a), 197, 203, 204, 213.

Information provided to the Inquiry

100. Above all, this Inquiry has confirmed that examining whether publicising allegations of corrupt conduct is in the public interest is challenging. The issue is complex and people's views are shaped by their personal experience of being associated with allegations of corruption, general attitudes towards government and government services, and philosophical views about individual and community rights.
101. Many submissions supported publicising allegations of corruption. Submissions by the media, the Queensland Police Service, Queensland Whistleblowers Action Group, Associate Professor Joseph Fernandez and the majority of members of the public who made submissions held this position.
102. Some submissions opposed publicising allegations of corruption. Local governments, the Local Government Association of Queensland, the Queensland Police Union of Employees, the Queensland Law Society, Queensland Rail, the Queensland Council for Civil Liberties, Professor Charles Sampford, Professor AJ Brown and a smaller proportion of members of the public who made submissions held this position.
103. The Liberal National Party and a small number of submissions from members of the public held somewhat mixed views on this topic, reflecting the complex and competing issues at play. The Liberal National Party held the view that the publication of the real or potential investigation of such a matter by the CCC may adversely affect the efficiency and progress of that investigation and have other impacts (such as those identified in the discussion paper). It also recognised that the freedom to speak publicly on political and governmental matters is an integral part of our free and democratic society.
104. A small number of submissions did not state a position but provided information considered relevant to the topic. The NSW Independent Commission Against Corruption (ICAC) stated that there were currently no provisions in the *Independent Commission Against Corruption Act 1998* to prevent a complainant from publicising that they had made a complaint to the ICAC and considered current provisions to be sufficient for ICAC to manage such instances.
105. While submitters may have the same position on whether publicising allegations of corrupt conduct is in the public interest, the rationale for their position was different.
106. To capture the various perspectives, this report outlines submitters' overall position on whether publicising allegations of corrupt conduct is in the public interest, as well as the factors considered important in arriving at these positions.

Open, transparent and accountable government

Publicising allegations of corrupt conduct is an important feature of democratic government

107. A number of submissions argued that publicising allegations, before they are assessed or finalised, is democratic and in the public interest. They suggested that public knowledge of allegations of corrupt conduct was helpful in understanding how Queensland's system of government functions, and in turn, that an understanding of the functioning of government was at the core of a democratic government.

108. The Joint Media Organisation submission (Submission 48), the Gold Coast Bulletin submission (Submission 25) and Ms Catherine Webber (representing the Gold Coast Bulletin on the media panel at the public forum) argued that voters – ordinary people – not only want to know, they have the right to know. Public access to information was considered a cornerstone of a democracy and a prohibition on publicising of allegations was viewed as censorship or “gagging”.

People have a right to know. It is part of the democratic process that voters – ordinary people – are kept informed (Gold Coast Bulletin, Submission 25).

109. Media agencies, in particular, considered the public “right to know” to be absolute. They saw no merit in the proposition that an untested allegation did not contribute to developing an understanding of the functioning of government. Ms Alison Sandy (representing the Seven Network on the media panel at the public forum) argued that the public understand the difference between an allegation and a fact.

110. Some submissions, however, did conclude that there was a difference between behaviour alleged to have occurred and behaviour proven, or at least tested to a certain standard, to have occurred. They suggested that publicising mere allegations of corruption was premature and cannot reasonably be said to contribute to open, transparent and accountable government.

The Council questions whether any real public interest is served in publicising mere allegations of corrupt conduct. The suggestion that this contributes to transparency and informed public debate does not withstand scrutiny (Moreton Bay Regional Council, Submission 28).

... no one benefits from such public discussion being allowed to extend (as it presently does) to malicious/politically motivated publication of unproven allegations of corrupt conduct against councillors and Council staff (Local Government Association of Queensland, Submission 34).

Access to government information is an important feature of democratic government

111. Being able to access information in the government's possession or control, unless it is contrary to the public interest to do so, is a key feature of democratic government. Queensland's RTI Act establishes the framework for this access.

112. Generally, information obtained, used or prepared for an investigation by the CCC is exempt from public access.⁹⁶ However, the Information Commissioner explained that this exemption was rarely used.

There are only a limited number of access applications where the CCC exemption is used as the basis for refusal of access, comparing [sic] with the total number of access applications dealt with by agencies where access to information is refused on a range of other grounds (Office of the Information Commissioner, Submission 36).

113. However, it was put to the Inquiry that the exemptions to public access, like those that protect law enforcement information, while clearly in the public interest make it difficult for individuals to access information relevant to their treatment by law enforcement agencies. It was argued that, in such instances, it is important that people are able to speak out publicly.

Our submission, of what happened to us, is an example of what can happen to citizens when ... personnel are not made accountable for their actions and are not open to public scrutiny and hide behind Legislative Exemptions to laws ie the RTI Act (Mr Greg and Mrs Joan Darlington, Submission 7).

Publicising allegations is a “check and balance” on the performance of the CCC

114. Some submissions put forward the view that public awareness of corruption allegations was an important “check and balance” on the performance of the CCC. While independent from the government, the CCC received public funding and should be held to similar standards for openness, transparency and accountability.
115. It was also argued that the CCC’s investigative and covert powers justified public scrutiny of CCC decisions. It was suggested that the CCC did not currently release sufficient information to enable the public to judge its performance. Some held the view that the CCC was actively secretive.
116. A number of submissions were distrustful of the CCC because they were dissatisfied with the way that the CCC dealt with their complaint.
117. These views result in a lack of confidence in the CCC’s ability to effectively oversight the public sector. Those who question the performance of the CCC typically consider that publicising allegations of corrupt conduct is necessary to expose corruption and prompt the CCC into action.

In conclusion, therefore, until such time as public trust can be openly and confidentially restored in the CCC – Queensland’s premier law-enforcement authority over public administration, I recommend that it would be an unwise, unjust and retrograde step against the public interest for the CCC or another (i.e. the police) to be given the authority to punish whistleblowers for refusing to be silent and under no relevant circumstances inform the media about their bona fide allegations of corrupt conduct lodged with the CCC (Mr Kevin Lindeberg, Submission 37).

118. It was suggested that the CCC publish more information about the operations of the CCC in order to improve community confidence and trust in the CCC. A range of potential solutions were

⁹⁶ The CCC is a “prescribed crime body” under the RTI Act.

offered, including publishing statistical information on allegations made to the CCC and information about outcomes, and engaging directly with the public through public forums.

119. A small number of submitters, such as the Queensland Law Society, held the view that the CCC should be trusted to perform its corruption function, and that publicity regarding how the CCC deals with complaints should not be required to substantiate their trustworthiness.

Publicising allegations is necessary because the principle of devolution is unsatisfactory

120. The principle of devolution is prescribed in the *Crime and Corruption Act 2001* and states that subject to the cooperation and public interest principles and the capacity of the agency, action to prevent and deal with corruption in an agency should generally happen in the agency (refer to footnote 50). It is a key principle in combating public sector corruption in Queensland.
121. A number of submissions put forward the view that the principle and process of devolution does not promote open, transparent and accountable government and described it as a case of “Caesar judging Caesar.”

I also oppose the practice of devolving complaints to agencies complained about to investigate themselves. My reasons are quite simple. The CCC is perceived and promoted as an apolitical, independent organisation, free from bias and coercion, and rightly so, but it must be recognised that as soon as an investigation is devolved to an agency headed by a politician (Minister), it could reasonably be considered that the investigation is no longer independent, and therefore, open to compromise and or manipulation by ministerial sycophants. Whilst not suggesting that any of the above is occurring, it must be acknowledged there is the probability of something along this line happening (Mr Charles Steff, Supplementary submission 8).

122. Devolution was considered particularly problematic in the areas of local government and policing. Local government investigations that occurred in environments where key players, including whistleblowers, could be identified were considered unsatisfactory. Investigations referred to the Queensland Police Service, an agency with significant powers, were referred to with scepticism and apprehension.

Publicising allegations of corruption exposes and deters corruption

123. Some submissions argued that a lack of public transparency provides the conditions for corruption to breed as abuse of office and power goes unchecked. For example, one participant stated:

To prohibit the publication of complaints is to stifle democracy and transparency. In turn, it promotes bad behaviour and criminal and corrupt behaviour by individuals and political organisation who are able to hide behind and utilise this secrecy to their advantage (Name withheld, Submission 70).

124. Another submitter, who focused specifically on local government, suggested that, even in the absence of corruption, lack of transparency creates suspicion that corruption will arise.

When the deliberations and decisions of a council are hidden from the public it is to be expected that the suspicion of corruption will arise (Name withheld, Submission 64).

125. Submissions that supported publicising argued that publicising allegations actually allows corruption to be detected. Associate Professor Joseph Fernandez argued that:

The role of the media is critical in raising public awareness, promoting integrity and detecting and reporting on corruption. Successful action against corruption is dependent on knowledge and information which can be delivered by media.... Any further censoring of the media runs the real risk of permitting unsavoury or illegal practices to continue undetected (Associate Professor Joseph Fernandez, Submission 57).

126. The media's role in exposing police corruption that led to the establishment of the Fitzgerald Inquiry was noted by a number of submissions.⁹⁷

And it has been well documented in Queensland that reporting allegations will bring others forward to report their concerns. Police officer Colin Dillon's decision to talk to investigators and appear at the Fitzgerald Inquiry was a watershed moment in exposing corruption in Queensland (Gold Coast Bulletin, Submission 25).

127. Some argued that publicising and exposing those engaged in alleged corrupt conduct can act as a general deterrent to those who may otherwise consider engaging in such conduct.

Complainants and whistleblowers expose corrupt conduct

128. Many submissions acknowledged the vital role of whistleblowers in exposing corruption and highlighted the importance of maintaining an approach that supports them to make allegations.

129. Mr Greg McMahon, from the Queensland Whistleblowers Action Group, stated that any change to the status quo would inhibit whistleblowers from disclosing public sector and judicial corruption.

130. Others argued that prosecuting whistleblowers or complainants for making their allegations public would erode the credibility of the CCC and its role in fighting corruption.

This seems to be part of a worldwide trend where whistleblowers are more likely to be treated as the criminals while the persons against whom they have lodged a complaint are protected. The application of this trend to Queensland would not instil confidence of the public [sic] the integrity of government and would create a concern justice is not being actively pursued or seen to be pursued (Queensland Local Government Reform Alliance Inc., Submission 73).

131. Others argued that people need to be able to go public when systems fail.

When organisational complaints systems fail a silent vulnerable person far from public view – exposing the issue to the media is considered a last resort necessary measure (Mr Lex Wotton, Submission 53).

Greater accountability is required of electoral candidates and elected officials

132. Many members of the public were of the view that elected officials and those seeking to be elected to public office are, by virtue of their responsibilities to the community, subject to greater accountability and should expect greater public scrutiny than ordinary individuals.

⁹⁷ Fitzgerald, GE 1989, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. *Report of a Commission of Inquiry Pursuant to Orders in Council: Dated (i) 26 May 1987, (ii) 24 June 1987, (iii) 25 August 1988, (iv) 29 June 1989* (Fitzgerald report), Brisbane, Queensland.

133. It was considered particularly important that the voting public receive information, including allegations of corruption, in the period leading up to elections.
134. A number of submissions likened the lead-up to elections as the period where politicians are applying for a job or compared the decision-making process of a voter to that of a significant purchase. It is the time when their policies, their character and their suitability for the job is scrutinised.
- During election times is when the public are “buying” the product so to prohibit commentary around candidates (the product) would be to deny the public relevant contextualised information. For example, car reviews are not banned while that model is still on the market. That is the time that the public need the lights on the brightest. Buyer beware but always in context through the CCC making relevant non-judgemental comment (Name withheld, Submission 79).
135. Ms Danielle Cronin, from the Brisbane Times, suggested that if allegations of corrupt conduct against a candidate are proven, and were not reported by the media, then the public have been duped.
136. Supporters of publicising allegations argued that while allegations made against electoral candidates could be politically motivated, there should not be a blanket prohibition on allegations made public during the lead-up to elections.

Freedom of speech

Freedom of speech should be protected

137. A number of submissions were of the view that the right to free speech, a free media and public access to information are fundamental to Australia’s modern democratic society.
138. The Joint Media Organisations submission stated that the public have the “right to know” and that, in the absence of laws enshrining freedom of speech, a number of keystones that are fundamental in Australia ensure this right:
- The ability of journalists to report in the public interest without the risk of being prosecuted
 - Protection of confidential sources
 - Protection for whistleblowers
 - An appropriate balance of power between the judiciary, the executive, the legislature and the media.
139. The Joint Media Organisations submission argued that the public’s right to know is particularly acute in the context of allegations of corrupt conduct because the conduct involves the exercise of public functions or powers. They referred to *Lange v Australian Broadcasting Corporation*, where McHugh J stated there is a legitimate interest of the public to know about the exercise of public functions or powers and, further, those who know information concerning such functions,

powers and performances have a duty or interest to communicate this information to the public.⁹⁸

140. It was argued that existing laws are in place to deal with those who abuse their freedom of speech, and that reform must be limited to that which is absolutely necessary for the safety of society.

Freedom of speech is a fundamental pillar of our free society, to be carefully and diligently protected and preserved. The right to freedom of speech is not unfettered, but the fetters imposed upon it, in areas such as the law of defamation, national security legislation, the secrecy provisions of the Crime and Corruption Act and other legislation, and the rules about contempt of court and the Parliament, must always be cast so as to go no further than is reasonably necessary for the protection and maintenance of that free society (Liberal National Party, Submission 27).

141. Professor Charles Sampford suggested that the media undoubtedly have a role in publicly exposing failures to investigate corruption – either because there is no body to carry out these investigations or because they argue that the designated body is not doing its job. He also argued that while a free media is of great importance, issues of national security and investigations of serious crime justify limits on media reporting (Professor Charles Sampford, Submission 45).

Freedom of speech and individual rights should be balanced

142. Some submitters, while acknowledging the importance of freedom of speech, argued that it was necessary to balance freedom of speech and individual rights. Individuals have a right to be treated fairly.

It might be argued that an individual's or an organisation's right to freedom of speech is forfeited in circumstances where that expression does not treat other people fairly (Mr Paul Favell, Submission 41).

143. It was suggested that people can be treated unfairly under the guise of freedom of speech.

Freedom of speech must be balanced with social responsibility yet in the absence of that individual or collective responsibility government must take a leading role in setting appropriate legislative standards. Our judicial system centres on the concept of "innocent until proven guilty" yet in many circumstances the often biased and misinformed view (disguised as freedom of speech) can lead to unfair and unreasonable outcomes both for individuals and agencies alike (Sunshine Coast Council, Submission 30).

Reputational damage

Alleged subject officers experience reputational damage

144. Some submissions challenged the proposition that publicising allegations of corrupt conduct caused reputational damage. They suggested that the public is attuned to the use of the term "allegation" and understand that such behaviour has not been tested or confirmed by

⁹⁸ *Lange v The Australian Broadcasting Corporation* (1997) 189 CLR 520.

investigating agencies or the court.⁹⁹ On that basis, publicising allegations cannot cause reputational harm.

Well I think that there's evidence to the contrary. I mean, if you look at the election results of the Ipswich mayor, Paul Pisasale, for example, who has been subject of numerous CCC complaints and more than one CCC or CMC investigation. This is a public figure who has managed to secure more than 80 percent of his electorate's vote in consecutive elections, despite that. So the idea that mud stuck to him, I think doesn't wash (Mr Mark Solomons, Media Panel at Public Forum).

The media too can be politicised.... The population is thus experienced and educated about the reliability of the media in general and of certain media sources in particular. This experience has only reinforced the benefits of following the adage of the presumption of innocence (Queensland Whistleblowers Action Group, Supplementary submission 23).

The public are not stupid and can understand the very clear difference between being corrupt and being alleged to be corrupt (Name withheld, Submission 79).

145. However, most submitters acknowledged the potential for publicising allegations to cause reputational damage.

146. The Inquiry heard that publicising allegations of corrupt conduct can damage reputations, marriages and careers, and that it can be impossible to escape from that damage.

Anyone in power knows that damaging information, proven or unproven, about public figures, or their practices, undermines public trust and confidence, and can leave the public with questions about the suitability of such people for public office, and of course affect their chances of re-election (Ms Diane Bruhn, Submission 69).

147. In some cases, baseless allegations are made with the intention to inflict reputational damage. Submissions noted that this is particularly acute in the political environment where a complainant gains significant political advantage at the expense of the alleged subject officer's reputation (Liberal National Party, Submission 27). Mr Bill Potts, President of the Queensland Law Society (Submission 21), also noted publicising allegations of corrupt conduct may result in irreversible damage to an individual's reputation if the complaints are found to be baseless and/or vexatious.

148. Professor Charles Sampford argued that because taking an allegation to the media reduces the likelihood of a successful prosecution, it may be done to inflict political or economic damage.

If a complainant really believes that another may be doing something wrong, the last thing they should contemplate is alerting the alleged wrongdoer and thereby giving the latter an opportunity to destroy evidence, coerce potential witness, or concoct and share stories among potential witnesses. Such publicity reduces the chance of the alleged wrongdoer being caught.

If a complainant makes the complaint public and thereby reduces the likelihood of wrongdoers being prosecuted, it would suggest an ulterior motive – generally political or economic damage (Professor Charles Sampford, Submission 45).

⁹⁹ See paragraph 109.

149. The risk and impact of reputational damage was seen to be elevated by the new media landscape, in Queensland's remote and regional communities, and in cases where the report states that the allegation had been referred to the CCC.
150. The new media landscape, where news cycles and social media rapidly provide information to mass markets, means that reputational damage can be far more widespread and will not fade from the public record (Ipswich City Council, Submission 44).
151. The potential for reputational damage in remote and regional communities was considered to be greater because subject officers were more easily identified within small populations and the impacts were more significant.

The consequences of these risks could be particularly severe if the allegations were made concerning persons in a remote or regional community where the publication of allegations (dependent upon their nature) could potentially bring broader ostracism, victimisation and ridicule to the individual concerned and their family. ... A person's reputation can be damaged simply by being associated with an allegation of corrupt conduct (Queensland Rail, Submission 22).

152. There was also a view that the reputational damage was amplified when the allegation of corrupt conduct was publicised alongside mention of the CCC. The perceived involvement of the CCC was seen to legitimise the allegation.

There is little doubt that reporting a person is suspected of an offence by an authoritative body, such as the CCC, would seriously damage a suspect's reputation because readers would be entitled to surmise that the suspicion is based on reasonable grounds. The publication under those circumstances has the capacity to diminish trust or confidence in the person and cause others to avoid business or social contact, at least until the suspicion is eliminated (Mr Craig Burgess, Submission 29).

153. Despite the potential for reputational damage, some submissions argued that the public's right to know about alleged wrongdoing, particularly alleged wrongdoing engaged in by public officials, overrides potential reputational damage. Mr Greg McMahon, from Queensland Whistleblowers Action Group, stated:

The notion that the rights to free speech and to a free press should be surrendered for the protection of the reputations of politicians appears to be so out of balance as to be a nonsense (Queensland Whistleblowers Action Group, Supplementary submission 23).

154. The media submissions argued that they actively sought to minimise the potential for reputational damage. They noted that most journalists were committed to the standards outlined in the media code of ethics which requires journalists to report honestly, accurately, fairly and to disclose all relevant facts. Providing an opportunity to those who might be adversely named to reply is key to achieving this.
155. Some submitters questioned whether contemporary reporting adhered to these standards. They argued that modern media's profit motive was best served by scandal not well-balanced, informed stories that included rebuttals. Further, when the matter has been finalised by an investigating agency the story was "old news" and media were less likely to publish outcomes that cleared implicated people of alleged wrongdoing.

156. It was noted that legal avenues were available to those who believed that the reporting of false statements caused them harm. However, many submissions argued that the current laws were time-consuming, costly and did not effectively prevent or redress reputational damage.

While laws, such as defamation, privacy, anti-discrimination law seek to strike a balance between preserving these freedoms and protecting people from harm, they do not extend to protect councillors and Council staff from the harm caused when a malicious or politically motivated complainant publishes an unproven allegation of corrupt conduct (Local Government Association of Queensland, Submission 34).

157. Mr John Smith, who was awarded damages in a defamation case involving allegations of corruption made during a local election campaign, stated that his reputation was already damaged and was not restored by the court outcome. He also indicated that the negative experience meant he would not seek to be involved in local government again.

I think when you get to the point of going to court that your reputation is done anyway (Mr John Smith, public forum).

158. The contrast between the protections provided to whistleblowers or notifiers and the lack of protections afforded to the accused was also noted. Mr John Smith highlighted the fact that a complainant can choose to remain confidential, yet the alleged subject officer cannot.

Organisations and agencies experience reputational damage

159. Publicising allegations of corrupt conduct, whether a single, high-profile matter or multiple minor matters, can damage the reputations of institutions and agencies.

160. The Local Government Association of Queensland suggested that the institution of local government in Queensland had been damaged by the publicising of baseless allegations during election campaigns.

...the complainant “goes public” with his/her allegations, causing reputational damage for Councils and individual councillors, prior to the allegations being the subject of any preliminary investigation, let alone determined (Local Government Association of Queensland, Submission 34).

161. Confidence in the CCC can be undermined when it is required to deal with allegations that, on their face, appear to have reputational damage as their goal and attempt to leverage the involvement of the CCC to achieve this.

Fair trial

162. Submitters had different views on the impact of publicity on the prospects of receiving a fair trial.

163. Numerous submissions contended that a fair trial was achievable in instances where allegations had been made public. The presumption of innocence of an accused person remains intact despite pre-trial publicity.

164. As previously stated, some held the view that the public understands the difference between allegations, which are untested, and charges, which have been tested to some degree, and court outcomes. They also suggested that the current legal protections for ensuring a fair trial were adequate.

There are already dozens of rules and applications available within the legal system that the CCC does not have to bring in a new one that is suitable only for the protection of a public official or servant. Usually before a trial of a public official there already have been many steps taken and determinations made (Mr Gary Duffy, Submission 80).

165. Other submitters suggested that publicising allegations had a prejudicial effect that erodes the possibility of a fair trial.

There is very clear evidence of the potential prejudicial effect that the publication of at least certain facts about a person may have in relation to their prospects of a fair trial. This is particularly true of evidence not admissible at a trial (Mr Michael Cope, Queensland Council for Civil Liberties, Submission 40).

Effectiveness of the CCC to deal with allegations of corruption

166. Submissions noted the critical role of the CCC in dealing with corruption in Queensland.

The Commission itself, in its corruption investigation role, is an important mainstay of our democratic system of government, and it plays a fundamental part in the promotion and maintenance of integrity in public office (Liberal National Party, Submission 27).

167. There were different views on the value of publicity for the CCC in performing its corruption function.

168. Some suggested that publicising allegations of corruption assisted the CCC to perform its corruption function by prompting people to provide to the CCC information relevant to a matter or information about different, but related, matters.

...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... (Mr Mark Solomons, Media panel, Public forum).

... it is also true that this function [corruption function] may also be served by official or unofficial publicising of allegations, for example where this has the effect of prompting the disclosure of other allegations or information relevant to the matter (Professor AJ Brown, Submission 52).

169. While law enforcement and civilian investigators agreed that publicising information can elicit relevant information, they advised that the potential benefits of disclosure must be carefully balanced against the likelihood of compromising the investigation. They identified a number of ways that publicity undermines the assessment process and investigation, including by:

- alerting subject officers and other involved parties who can then destroy evidence and endanger witnesses
- allowing involved parties time to concoct false versions of events
- reducing the time for operational planning and preparation
- limiting investigative options, particularly covert strategies
- publicising law enforcement methodology.

170. These negative consequences were echoed by some submitters.

Finally, it is important to note that the CCC is an investigative body whose functions depend upon its ability to, amongst other things, compel the production of documents, compel a witness to give evidence, obtain search warrants, seize property and gather intelligence. The publication of complaints has the potential to adversely affect the ability of the CCC to exercise its investigatory powers and make appropriate referrals to prosecuting agencies (Ipswich City Council, Submission 44).

171. To avoid these negative consequences, a number of submissions suggested that investigative agencies should control the public release of information.

172. However, the Joint Media Organisations submission noted that if the CCC had concerns about the destruction of evidence it could seek to make the current CC Act “Obstruction of the CCC offence”¹⁰⁰ more robust (e.g. a higher penalty).

¹⁰⁰ CC Act (Qld) s 210.

Conclusion and recommendation

173. As the agency with primary responsibility for preventing and investigating corrupt conduct in Queensland, the CCC has a significant interest in promoting a strong, corruption-resistant system of government. The CCC and those who made submissions to the Inquiry are opposed to any measures which may weaken Queensland's approach and support those which will further enhance it.
174. The issue is how this can be achieved in the context of this Inquiry. On this question, minds differed.
175. In addressing this issue, it is very important to again emphasise that the question is about publishing *allegations* of corrupt conduct, that is, unproven, untested allegations made against identified individuals.
176. There is no argument that public discussion and debate are important elements of open, transparent and accountable government. As noted in the CCC's Discussion Paper and reinforced by submissions to the inquiry, open discourse informs the development of opinions, allowing people to participate more fully in their government and hold elected and other public officials to account.
177. There are examples where the publication of allegations has led to the exposure of corruption, the best example of which was the Fitzgerald Commission of Inquiry.
178. However, such publication comes at a cost and the question is whether the cost is too high.
179. Publicising allegations of corrupt conduct can negatively affect the CCC's ability to detect and investigate allegations of corruption. It is unarguable that corrupt officials who wish to avoid detection will immediately act to conceal evidence of their actions once alerted to the fact they are being scrutinised. Making public an allegation of corruption before the CCC has ascertained whether it has merit can result in the destruction of evidence, fabrication of a false explanation, interference with witnesses and absconding of subject officers. The public release of information can also limit the CCC's investigative options, particularly covert activity such as physical and technical surveillance, which is often critical to the success of an investigation.
180. In some cases, the investigative strategies will be enhanced by publicising aspects of the particular matter. The nature and timing of the public release, however, is best determined by the investigating agency which has full knowledge of the most appropriate tactical option at any given time.
181. Publicising allegations of corruption also risks draining limited public resources. For example, the CCC will not know that an investigation has been irretrievably damaged (e.g. evidence destroyed, false explanations established) prior to expending resources investigating the

matter. These investigative resources could have been directed to matters that have better potential for investigation. This is inevitably the case where baseless allegations are made.

182. Publicising baseless allegations of corruption also risks damaging a person's reputation. This risk is amplified in contemporary society where mass communication methods mean that allegations are instantaneously and widely transmitted, and stay on the public record in perpetuity.
183. Public allegations are often also attended by a statement that the matter has been referred to the CCC in an effort to raise the credibility of the complaint and, in doing so, may further damage reputations.
184. Advocates for the right to publicise allegations will argue that the CCC's role is not to protect the reputation of those seeking election to public office and there are already remedies available to people whose reputations have been damaged. We agree.
185. However, in agreeing with that proposition, we have concerns that access to justice is not always achieved through the existing legal schemes of defamation, privacy and anti-discrimination. Taking action under these schemes can be costly and time-consuming and, therefore, generally prohibitive for the majority of people. Even if a plaintiff who was seeking election to public office was to pursue an action in defamation, it is unlikely that the proceedings would be finalised prior to the election. Further, the remedy is not necessarily a restoration of their reputation rather it is an award of damages that seeks to compensate the injured party. Only criminal proceedings, which are rare, have the object of punishing the defamer. Any reforms in this area are outside the remit of this Inquiry and are a matter for government.
186. Publicising untested allegations involving public sector organisations and officials can also unfairly damage the public's trust in their institutions of government. The institution of local government, and by extension democratic government, is being damaged by the high number of baseless allegations being made against councillors and individuals seeking election.
187. Despite all of the compelling arguments against publishing allegations of corrupt conduct, the CCC acknowledges that public access to information is a critical feature of a democratic system of government. While the CCC is not convinced that publicising untested corruption allegations, in reality, contributes to open, transparent and accountable government, there must be compelling reasons to justify moving away from this important principle.
188. The CC Act has a number of existing provisions that deal with the publication of information and confidentiality. Making better use of these provisions will go some way to preventing the release of information by public sector employees¹⁰¹ and the publicising of information relevant to a complaint once it has been made to the CCC.¹⁰²

¹⁰¹ CC Act (Qld) ss 40, 46(3), 48; Crime and Corruption Commission (Qld), *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector* (2016) <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>.

¹⁰² CC Act (Qld) s 213.

189. But the CCC does not have the power to prevent people who are not employed by the state or local government from publicising allegations of corrupt conduct. Further, prosecutions on the basis that a person has made a complaint that is vexatious, not in good faith, mischievous, reckless or malicious are unlikely to be successful because of the difficulty in identifying the people responsible and proving their state of mind.
190. On balance, the CCC is of the view that, with one exception, there should be no change to the law. The exception concerns publicising allegations of corruption against a councillor or candidate in the lead-up to local government elections.
191. A review of CCC data for the period 1 July 2007 to 30 June 2016 found:
- Complaints made to the CCC about local government increased during local government election periods. The CCC received significantly more local government corruption complaints per month during the 2008, 2012 and 2016 election periods (an average of 39 matters per month) than the equivalent months in non-election years (an average of 29 matters per month).
 - While complaints about State Parliament increased during State Government election periods (2009 and 2012), this increase was not statistically significant when compared to the equivalent months in non-election years, so may be explained by natural variation in complainant behaviour.
 - The increase in local government corruption complaints is driven by an increase in allegations against councillors and mayors, not allegations against local government employees. The CCC received significantly more allegations per month where the subject officers were councillors or mayors during the 2008, 2012 and 2016 election periods (an average of 27 per month) than the equivalent months in non-election years (an average of 12 allegations per month).
 - Of those allegations made about councillors and mayors during election periods, 69% did not contain sufficient evidence to enable the CCC to reasonably conclude that the conduct may amount to a criminal offence or disciplinary breach (compared to 21% of allegations against local government employees and 38% of all local government allegations).
 - The proportion of substantiated allegations against councillors and mayors was generally low during election periods (6%) and non-election periods (8%).¹⁰³
192. It is open to conclude that a large number of allegations received by the CCC in the lead up to local government elections are baseless and merely designed to effect electoral damage on political opponents.
193. Before every local government election, the CCC implores candidates not to use the CCC as a vehicle to denigrate their opponents by lodging baseless complaints.
194. Given that the CCC prioritises the assessment of politically sensitive matters in the public interest, it is also of concern that significant CCC assessment resources are directed to baseless

¹⁰³ Percentage of all allegations reviewed by the CCC.

matters and diverted from other potentially more important matters. It is not in the public interest for the CCC to be manipulated in this manner.

195. Nor is it in the public interest for a corrupt councillor or candidate to avoid detection. The tendency for allegations of corruption engaged in by councillors to be publicised in the media means that corrupt individuals get advance warning that they are being scrutinised by the CCC and can destroy evidence.¹⁰⁴

Recommendation

Proposed new offence

196. The CCC recommends the government consider making it an offence for any person to publicise:

- a) allegations of corrupt conduct against a councillor or candidate during a local government election period; or
- b) the fact that a complaint (whether or not it involves corrupt conduct) has been, will be or may be made to the CCC against a councillor or candidate during a local government election period

without first notifying the CCC and allowing the CCC at least three months to determine whether the allegations have merit.

197. The CCC considers the following elements necessary to ensure the success and public acceptance of the proposed new offence:

- Definition of “Publicise”: “Publicise” is intended to be limited to those actions that have the potential to deliver information to a mass audience. Importantly, it is not intended the offence prevent people from accessing legal advice or discussing their views in ordinary social discourse. Part A and B of the definition of “matter” in the *Defamation Act 2005* (Qld) may offer some guidance in this regard.¹⁰⁵
- Limiting the offence to the local government election period: The intention here is to target the behaviour to be prevented and minimise broader impacts on freedom of speech, and open and accountable government. The *Local Government Electoral Act 2011* defines the local government election period as commencing when public notice of the holding of the election is given under section 25 and ends on the close of the poll for the election.
- CCC to assess allegations within three months: The CCC must assess the allegation and correspond with the person making the allegation (notifier) within three months of receipt of the allegation. This approach is similar to that for dealing with disclosures to journalists

¹⁰⁴ The CCC examined all articles captured by its Media Monitors service during the period January to June 2016. Of identified articles that mentioned the CCC and an allegation of corruption, 80% related to councillors or people involved in local government elections (e.g. donors).

¹⁰⁵ Schedule 5, Defamation Act. *Matter* includes—(a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical; and (b) a program, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication.

under the PID Act.¹⁰⁶ To promote public confidence, accountability, transparency, and free speech, the CCC considers that three months (as opposed to six months as specified in the PID Act) is an appropriate period of time to allow allegations to be assessed and evidence to be secured. Prior to the end of the three-month period, the CCC will correspond with the notifier, stating reasons for the assessment decision.

In cases where the CCC wishes to make further assessment inquiries or begin an investigation, and decides that the public interest requires that the complaint and its investigation be kept confidential, the CCC may require the complainant (and others) to keep their communications with the CCC confidential.¹⁰⁷ In these circumstances it would be an offence for a complainant (and others) to disclose the information to others unless the disclosure was made for purposes authorised under the CC Act or the information was publicly available.¹⁰⁸ Where the CCC does not correspond with the complainant within three months, the complainant can publish without committing an offence.

- Penalties: The CCC anticipates that the offences would be summary offences that could be prosecuted within two years from the date of publication.¹⁰⁹ Penalties by way of fines and imprisonment similar to those existing within the CC Act would be appropriate.¹¹⁰

Also the aggrieved councillor, candidate or CCC would have a statutory right to obtain an injunction to restrain any person from further publishing the allegations during the relevant periods without authority under the CC Act.

198. The proposed publicising “blackout” period does not mean that corrupt public officials will not be held to account. Because of the impact of allegations against councillors, mayors and candidates, the CCC will continue to prioritise, in the public interest, the assessment and investigation of these matters. Ultimately, while there may be a delay while the allegation is investigated and progresses through the court, councillors and mayors who are convicted of a criminal offence may be removed from office.

CCC actions

199. To support this reform, the CCC will make better use of existing provisions under the CC Act. Specifically, the CCC will ensure that the directions¹¹¹ and guidelines¹¹² given to CEOs of units of public administration and communication with complainants clearly state expectations that complaints be kept confidential. As stated above, the CCC will also make better use of the secrecy provisions in the CC Act to ensure notifiers who are not employed by the public sector do not disclose information to others.

¹⁰⁶ PID Act (Qld) s 20.

¹⁰⁷ CC Act (Qld) ss 62, 174, 213.

¹⁰⁸ *Ibid* s 213.

¹⁰⁹ This period of time is considered necessary to allow related investigations of corrupt conduct allegations to be completed.

¹¹⁰ CC Act (Qld) s 213.

¹¹¹ *Ibid* ss 40, 48.

¹¹² Crime and Corruption Commission (Qld), *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector* (2016) <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>.

200. The CCC will also continue to improve the transparency and accountability of the agency. To achieve this, the CCC is implementing a number of strategies to more effectively communicate with complainants, agency stakeholders and the community, including:
- a. improving communication providing reasons for assessment and outcome decisions
 - b. providing access to allegations data to assist public sector agencies to identify corruption risks.
 - c. in the event that our recommendation is accepted by government, publicly reporting on the number and type of allegations made and action taken by the CCC during local government election periods.
 - d. conducting targeted local government sector audits.
201. The performance of the CCC will also continue to be monitored and reviewed by the Parliamentary Crime and Corruption Committee.

Appendix 1: List of submissions

- 1 Mr Doug Young (including Supplementary submission)
- 2 Name withheld
- 3 Name withheld
- 4 Confidential not for publication
- 5 Mr Ross Bradley
- 6 Mr Charles Steff (including Supplementary submission)
- 7 Mr Greg and Mrs Joan Darlington (including Supplementary submission)
- 8 Mr William Tait
- 9 Confidential not for publication
- 10 Confidential not for publication
- 11 "Concerned Queensland Nanna"
- 12 "An angry fed up citizen with no convictions or charges"
- 13 Mr Yoju Oshawa
- 14 Mr Gregory Copley
- 15 Confidential not for publication
- 16 Name withheld
- 17 Confidential not for publication
- 18 Name withheld
- 19 Name withheld
- 20 Scenic Rim Regional Council
- 21 Queensland Law Society
- 22 Queensland Rail
- 23 Whistleblowers Action Group (Qld) (including Supplementary submission)
- 24 Independent Commission Against Corruption, New South Wales
- 25 Gold Coast Bulletin
- 26 Confidential not for publication
- 27 Liberal National Party
- 28 Moreton Bay Regional Council

- 29 Mr Craig Burgess
- 30 Sunshine Coast Council
- 31 The Brisbane Times
- 32 Banana Shire Council
- 33 Confidential not for publication
- 34 Local Government Association of Queensland
- 35 Parliamentary Crime and Corruption Committee
- 36 Office of the Information Commissioner
- 37 Mr Kevin Lindeberg (including Supplementary submission)
- 38 Confidential not for publication
- 39 Ms Cynthia Kardell
- 40 Queensland Council for Civil Liberties
- 41 Parliamentary Crime and Corruption Commissioner
- 42 Queensland Police Service
- 43 Department of the Premier and Cabinet
- 44 Ipswich City Council
- 45 Professor Charles Sampford
- 46 Northern Peninsula Area Regional Council
- 47 Name withheld
- 48 Joint Media Organisations
- 49 Mr Jason Dickson
- 50 Mr Robert Miller
- 51 Mr Shane Doherty
- 52 Professor A.J. Brown
- 53 #teamLEX and Lex Wotton (including Supplementary submission)
- 54 Ms Helen Underwood
- 55 Ms Constance Andrews
- 56 Queensland Police Union of Employees
- 57 Associate Professor Joseph Fernandez
- 58 Mr Robert Pelnens
- 59 Mr Nigel Powell
- 60 Mr Mark Solomons
- 61 Ms Karen Haddock

- 62 Mr Greg Williams
 - 63 Confidential not for publication
 - 64 Name withheld
 - 65 Mr Greg Diets and Mr Stephen Langdon
 - 66 Cookshire Ratepayers and Residents Association Inc.
 - 67 Mr Dennis Fry
 - 68 Confidential not for publication
 - 69 Ms Diana Bruhn
 - 70 Name withheld
 - 71 Name withheld
 - 72 Name withheld
 - 73 Queensland Local Government Reform Alliance Inc.
 - 74 Mr James Speed
 - 75 Confidential not for publication
 - 76 Mr Dave Barrowcliffe
 - 77 Ipswich Ratepayers and Residents Association Inc
 - 78 Name withheld
 - 79 Name withheld
 - 80 Mr Gary Duffy
 - 81 Confidential not for publication
 - 82 Name withheld
-

Appendix 2: List of speakers at public forum

Mr Michael Cope, General Counsel, Queensland Council for Civil Liberties

Mr Greg McMahon, Queensland Whistleblowers Action Group

Mr Ian Leavers, General President and CEO, Queensland Police Union of Employees

Ms Alison Sandy, Senior Journalist and FOI editor, Channel 7

Ms Catherine Webber, Editor, Gold Coast Bulletin

Ms Danielle Cronin, Editor, Brisbane Times

Mr Mark Solomons, Freelance Investigative Journalist

Dr Joseph M Fernandez, Associate Professor and Head, Department of Journalism, Curtin University

Professor Charles Sampford, Director, The Institute for Ethics, Governance and Law, Griffith University

Mr Bill Potts, President, Queensland Law Society

Ms Bronwyn Furse, Deputy General Counsel, Queensland Rail

Mr Clem O'Regan APM, Assistant Commissioner, Ethical Standards, Queensland Police Service

Mr Greg Hallam, CEO, Local Government Association of Queensland

Ms Jenny Mead, Acting Information Commissioner, Office of the Information Commissioner

Mr Lex Wotton

Mr Craig Burgess

Mr John Smith

Mr Greg and Mrs Joan Darlington

Mr Charles Steff

Mr Nigel Powell

Mr Kevin Lindeberg

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