## Response from Dr Matt Collins QC:

What does this case say about Australia's defamation laws? Do you think this case would have been summarily dismissed if it was filed in the UK or the US?

The judge was comfortably satisfied that the statutory defence of qualified privilege, which protects publications that are reasonable in all the circumstances, was made out. This is only the second time that the defence has succeeded in a case involving a mainstream publication, and the first since uniform defamation laws were introduced in 2005. The circumstances of the case were, however, unusual, in that Steve Cannane had relied on impeccable sources of information, including in particular the report of the Chelmsford Royal Commission. The defence has invariably failed in cases where defendants have relied on less authoritative sources, such as information provided by whistleblowers and leaked documents.

The trial was long and expensive, in part, because Cannane and HarperCollins (understandably) did not put all their eggs in the basket of the statutory defence of qualified privilege, but also set out to prove the truth of what they had published. That necessarily involved relitigating parts of the Chelmsford Royal Commission by calling extensive evidence. If they had relied only on the statutory qualified privilege defence, the trial would have been shorter and cheaper, but it would have involved quite a gamble, given the lack of success that publishers have enjoyed to date with the statutory defence.

There is a maxim in Australian defamation law that when it comes to defences, it is truth or nothing. This case disproves the maxim – although Cannane and HarperCollins also succeeded in their truth defence.

It is less likely that a case like this would have been brought in the first place in the UK or the US, but I don't believe courts in those places would have summarily dismissed a case of this kind had one been brought. It is more likely, however, that defendants in the UK and the US would have had the courage to run only a qualified privilege defence, without the additional security blanket of seeking to prove the substantial truth of what they wrote.

Do you believe this case should have been litigated given the book relied on the royal commission findings from 1990?

We hold Royal Commissions and other commissions of inquiry in order to discover the truth about important matters affecting society. Of course there will be times when Royal Commissions make mistakes, but to my mind there is an overwhelming public interest in being able to discuss freely hearings before, and findings of, Royal Commissions. Defamation actions based on accurate recitations of the evidence or findings of Royal Commissions can only chill important public discourse.

Will the defamation law reform announced by Mark Speakman prevent cases like this from being litigated in the first place? If not, what more is needed?

The statutory defence that succeeded in this case will continue to be available to defendants even after the commencement of the reforms. The reforms will introduce a new defence for publications concerning an issue of public interest where the defendant reasonably believed that the publication of the matter was in the public interest. That defence would be an obvious candidate in a future case of this kind. The combination of the new defence, and Cannane's success in this case (and the catastrophic and no doubt very expensive loss for the plaintiffs), would surely make cases like this less likely in future.