



## **SELECT COMMITTEE ON ETHICS**

### **Interim Report No. 1**

#### **Inquiry into matters relating to evidence of the Acting Chairperson of the Crime and Misconduct Commission, Dr Ken Levy, to the Parliamentary Crime and Misconduct Committee**

**May 2014**

## **Chair's foreword**

On 21 November 2013 the Legislative Assembly established the Select Committee on Ethics to investigate and report on matters relating to the evidence given by the Acting Chairperson of the Crime and Misconduct Commission, Dr Ken Levy, to the Parliamentary Crime and Misconduct Committee (PCMC) at hearings held by that Committee in November 2013, particularly the question of whether Dr Levy's evidence could have misled the PCMC.

Since its inception the Committee has given detailed consideration to a large volume of material related to Dr Levy's appearances before the PCMC and has also sought and received further evidence from a number of persons who were present at the hearings.

On 11 April 2014 the Committee received correspondence from Mr Bill Byrne MP, Member for Rockhampton and Shadow Minister for Police, Corrective Services and Emergency Services, Construction and Public Works, National Parks, Sport and Recreation. In his letter Mr Byrne advised the Committee that he had, on 10 April 2014, written to the Commissioner of the Queensland Police Service (QPS) asking the Commissioner to investigate Dr Levy for a possible offence against section 57 of the *Criminal Code*, which provision criminalises knowingly giving a false answer to a lawful and relevant question put to a person during an examination before the Legislative Assembly or a committee.

Following Ethics Committee precedent, the Select Committee wrote to the Commissioner of Police, noting that the facts that are the subject of the complaint by Mr Byrne MP are essentially the same as those that are being considered by the Select Committee, and seeking the Commissioner's advice as to the likely risk of interference to, or prejudice of, the QPS investigation, if the Select Committee was to proceed with its investigation concurrently with the police investigation. On 7 May 2014 the Committee received advice from the Commissioner of Police that suspension of the Committee's inquiries into the original complaint, until after the QPS has concluded its investigation, would avoid any suggestion of double jeopardy adversely affecting a just outcome.

After consideration of that advice and discussions with the Clerk of the Parliament, the Committee resolved to suspend its inquiry into this matter until the QPS investigation is finalised and to table this interim report to the House under Standing Order 215.

I commend the report to the House.



Mr Ian Rickuss MP

**Chair**

May 2014

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### **Introduction**

1. On 21 November 2013, the then Chair of the Parliamentary Crime and Misconduct Committee (the PCMC), Mrs Liz Cunningham MP, reported to the Legislative Assembly (the House) the PCMC's concern that potentially misleading evidence had been given by Dr Ken Levy, the Acting Chairperson of the Crime and Misconduct Commission, at the public and private hearings of the PCMC on 1 and 13 November 2013. Mrs Cunningham advised the House of the PCMC's resolution that the matter of Dr Levy's potential misleading of that Committee be referred to the Ethics Committee.<sup>1</sup>
2. In response the House resolved to establish the Select Committee on Ethics (the Select Committee/the Committee) which is charged with investigating and reporting on the matters relating to Dr Levy's evidence to the PCMC.
3. Since its establishment on 21 November 2013, the Committee has held twelve meetings in which to consider transcripts of evidence taken at private and public PCMC hearings held on 1, 13 and 18 November 2013; and related documentation, including minutes of PCMC private meetings. The Committee has also invited and considered written submissions from witnesses and others who participated in those hearings.
4. As a preliminary step to the Committee commencing its substantive consideration of the material before it, the Committee sought independent legal advice from Hon. Glen Williams AO QC in an emerging area of administrative law. That advice was received on 29 January 2014.

### **Referral of Dr Levy to the QPS by Mr Bill Byrne MP**

5. On 11 April 2014 the Committee received correspondence from Mr Bill Byrne MP, Member for Rockhampton and Shadow Minister for Police, Corrective Services and Emergency Services, Construction and Public Works, National Parks, Sport and Recreation. In his letter Mr Byrne advised the Committee that he had, on 10 April 2014, written to the Commissioner of the Queensland Police Service (QPS), Mr Ian Stewart, asking the Commissioner to investigate Dr Levy for a possible offence against section 57 of the *Criminal Code*. Section 57(1) of the Code provides that, a person who, during an examination before the Legislative Assembly or a committee, knowingly gives a false answer to a lawful and relevant question put to the person during the examination, commits a crime. The offence is punishable by a maximum 7 years imprisonment. Mr Byrne enclosed with his letter, a copy of his letter to the Commissioner of Police.
6. Given the potential for an impending police investigation, the Select Committee met to consider both pieces of correspondence from Mr Byrne and to determine its capacity to move forward with its inquiry in the light of Mr Byrne's approach to the QPS.

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<sup>1</sup> Queensland Parliament, Record of Proceedings, 21 November 2013, at 4208.

7. The Committee was guided by recent precedent of the House's Ethics Committee in considering how to address the potentiality of concurrent investigations being undertaken. Specifically the Committee considered Ethics Committee Interim Reports numbers 134<sup>2</sup> and 136.<sup>3</sup>
8. In Interim Report No.134 the Ethics Committee advised the House that it had a number of current matters before it in respect of which it had determined to exercise an 'abundance of caution approach', as was the custom and practice of past Ethics Committees<sup>4</sup>, and to suspend investigation of any alleged contempt where the matters were related to parallel criminal investigations being conducted by the CMC and/or the QPS. Interim Report No.134 then advised of the Committee's subsequent reconsideration of some of those suspension decisions and the fact that it had sought advice from the CMC as well as independent expert legal advice in respect of a matter that was both before the Ethics Committee and before the CMC concurrently.
9. The independent expert legal advice obtained by the Ethics Committee from Mr Peter Davis QC was that "*the starting position ought to be that the Ethics Committee should, notwithstanding any investigations by any other law enforcement bodies, proceed with its investigation unless there is some reason it ought not to do so.*"<sup>5</sup> In coming to this position, Mr Davis QC considered the case of the former Member for Sandgate Gordon Nuttall where contempt proceedings were contemplated to be heard by the Parliament at a time very close to a trial and which proceedings would cover at least one factual issue which had to be proved by the Crown in the criminal trial. Nuttall's second trial was to follow shortly afterwards. Mr Davis QC concluded that the Nuttall case involved 'quite special circumstances' such that it was appropriate for the Ethics Committee to avoid taking action which could compromise judicial proceedings. Mr Davis QC noted both the real risk of prejudice to the criminal trials and the danger of disruption to those trials caused by media reports of the contempt proceedings,

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<sup>2</sup> Ethics Committee Interim Report No. 134 *Proceeding with suspended matters - Matter of privilege referred by the Registrar on 19 March 2013 relating to an alleged failure to register an interest in the Register of Members' Interests; and Matter of privilege referred by the Speaker on 4 June 2013 relating to an alleged deliberate misleading of the House by a member; and other suspended matters.*

<sup>3</sup> Ethics Committee Interim Report No. 136 *Proceeding with suspended matters -- Matter of privilege referred by the Speaker on 25 October 2012 relating to an alleged deliberate misleading of an Estimates Committee by a Chief Executive Officer; Matter of privilege referred by the Speaker on 31 October 2012 relating to an alleged intimidation of a member by a legal firm; and Matter of privilege referred by the Speaker on 31 October relating to an alleged deliberate misleading of the House by a Minister or, in the alternative, a Chief Executive Officer of a committee.*

<sup>4</sup> With respect to the allegations relating to an alleged misleading of Estimates Committee D by Mr Gordon Nuttall in 2005, the Members' Ethics and Parliamentary Privileges Committee's (MEPPC) Report No. 72 noted that the committee's established procedure when dealing with allegations of contempt which may also be a possible criminal offence is to take no action in relation to the possible contempt until any actions in relation to the alleged criminal offence have been finalised. The MEPPC noted that any investigation of an Ethics Committee could prejudice the prospect of any possible criminal proceedings and/or a person's defence to those proceedings. Of particular issue is the fact that any evidence taken by the committee may not be used in legal proceedings due to Section 8 of the *Parliament of Queensland Act 2001*. Section 8 provides that the freedom of speech and debates and proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly.

<sup>5</sup> Op.cit 2 at p.3.

concluding that the Parliament should (as it did in Nuttall's case), avoid taking action which could compromise judicial proceedings.

10. The Ethics Committee considered advice from the CMC as to the likelihood that proceeding with the Ethics inquiry would interfere with or prejudice the CMC/QPS investigation, and the detailed advice from Mr Davis QC, and resolved to apply a new test in determining whether or not to proceed with an inquiry in circumstances where there are related investigations by law enforcement bodies.
11. The Ethics Committee accepted Mr Davis QC's advice that its starting position should be, that, notwithstanding any investigations by any other law enforcement bodies, it should proceed with its investigation unless there is some reason it ought not to do so. It also accepted that it should undertake an assessment of whether there is any real risk of interference or prejudice with investigations or any potential proceedings on a case by case basis.
12. The Ethics Committee resolved that as a first step upon becoming aware of a related investigation by a law enforcement body it should seek advice from that body as to the likely risk of interference or prejudice to the investigation at that point in time, and that it should reserve the right to make such inquiries of the law enforcement body again at any subsequent significant points in the Committee's inquiry should contempt and criminal investigations overlap in a re-commenced matter. The second step the Ethics Committee resolved to consider is the timing of public processes of a contempt matter, such as reporting to the House, and any potential impact those processes might have on a jury trial.<sup>6</sup>
13. After considering both the correspondence from Mr Byrne MP and advice from the Clerk of the Parliament, the Committee resolved to follow the tests outlined by the Ethics Committee in Interim Reports Nos. 134 and 136 when determining how it would progress its own inquiry.
14. Therefore, as a preliminary step, the Select Committee wrote to the Commissioner of Police on 17 April 2014, noting that the facts that are the subject of the complaint by Mr Byrne MP are essentially the same as those that are being considered by the Select Committee, and seeking the Commissioner's advice as to the likely risk of interference to, or prejudice of, the QPS investigation, if the Select Committee was to proceed with its investigation at this time.
15. On 7 May 2014 the Committee received correspondence from the Commissioner of Police in which the Commissioner noted the QPS view that suspension of the Committee's inquiries into the original complaint, until after the QPS has concluded its investigation, would avoid any suggestion of double jeopardy adversely affecting a just outcome. The Commissioner advised the Committee that QPS investigations into this matter will be expedited.
16. Accordingly, the Committee is tabling this interim report to the House under Standing Order 215 to advise the House that the Committee, in accordance with established procedure for Ethics Committees, is suspending its inquiry into this matter until the QPS investigation is finalised.

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<sup>6</sup> Ibid. at p.4.

## SELECT COMMITTEE ON ETHICS

<b>Chair</b>	Mr Ian Rickuss MP, Member for Lockyer (Chair from 02.05.14)
<b>Deputy Chair</b>	Hon. Tim Mulherin MP, Member for Mackay
<b>Members</b>	Mr Aaron Dillaway MP, Member for Bulimba (from 02.05.14) Mr David Gibson MP, Member for Gympie (Chair 21.11.13 to 23.04.14) <sup>7</sup> Mr John Hathaway MP, Member for Townsville <sup>8</sup> Mr Carl Judge MP, Member for Yeerongpilly Mr Curtis Pitt MP, Member for Mulgrave
<b>Staff</b>	Ms Renée Easten, Research Director Ms Tamara Vitale, Executive Assistant Mrs Gail Easton, Executive Assistant (17.02.14 to 14.03.14)
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<sup>7</sup> Mr Gibson stood down from his position as Chair of the Committee by notice to the Speaker dated 23 April 2014.

<sup>8</sup> In accordance with SO202(1) Mr Steve Davies MP, Member for Capalaba, replaced Mr John Hathaway MP for the Select Committee on Ethics meeting of 11 December 2013.