



PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Members present:

Mrs EA Cunningham MP (Chair)
Mrs JR Miller MP (Deputy Chair)
Mr MJ Crandon MP (via teleconference)
Mr IS Kaye MP
Mr JM Krause MP
Ms A Palaszczuk MP
Mr PW Wellington MP (via teleconference)

Staff present:

Ms A Honeyman (Research Director)
Ms K Christensen (Principal Research Officer)

PUBLIC HEARING—MEETING WITH PARLIAMENTARY CRIME AND MISCONDUCT COMMISSION

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 1 NOVEMBER 2013

Brisbane

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Committee met at 9.04 am

CHAIR: I declare this public hearing of the Parliamentary Crime and Misconduct Committee open. I am Liz Cunningham, the member for Gladstone and chair of the committee. Mrs Jo-Ann Miller, the member for Bundamba, is the deputy chair. The other members of the committee are Mr Michael Crandon, member for Coomera, by teleconference; Mr Ian Kaye, member for Greenslopes; Mr Jon Krause, member for Beaudesert; Ms Annastacia Palaszczuk, member for Inala and Leader of the Opposition; and Mr Peter Wellington, member for Nicklin, by teleconference.

I remind all participating today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the chair. These proceedings of the committee may be broadcast online, with the conditions for broadcasters and guidelines for camera operators which are available in the room. I ask that mobile phones be switched off or switched to silent.

FLORIAN, Ms Kathleen, Acting Assistant Commissioner, Crime and Misconduct Commission

FOX, Mr George, Part-time Commissioner, Crime and Misconduct Commission

LEVY, Dr Ken, Acting Chairperson, Crime and Misconduct Commission

McMENIMAN, Professor Marilyn, Part-time Commissioner, Crime and Misconduct Commission

MENDELLE, Ms Edith, Executive General Manager, Crime and Misconduct Commission

NASE, Mr Philip, Part-time Commissioner, Crime and Misconduct Commission

SCOTT, Mr Michael, Acting Assistant Commissioner, Crime and Misconduct Commission

CHAIR: I welcome the CMC acting chair and commissioners and staff. I thank Dr Levy for the public report on the CMC's activities during this period. For the benefit of Hansard, I would ask all witnesses to identify themselves the first time they answer a question asked of them. I would ask Dr Levy if he would like to make an opening statement.

Dr Levy: Thank you, Madam Chair. I am Ken Levy, the acting chair of the Crime and Misconduct Commission in Queensland. Thank you, Madam Chair, committee members and members of the public. The CMC today is represented by all of the commissioners and the two assistant commissioners of the commission. In addition, I might just note that this is the last meeting of Commissioner Philip Nase after a lengthy period being associated with the Crime and Misconduct Commission.

As I am sure you are aware, there have been recent criticisms of me, particularly about the comments I made recently to journalists, and some commentators have stated that the CMC's independence has been diminished. First of all, I want to assure the committee and Queenslanders that that is not the case. I have not lost my independence; nor has the commission lost its independence.

The Crime and Misconduct Commission is a diverse organisation and in recent times our crime portfolio has been working closely with the government and our law enforcement partners to tackle the criminal motorcycle gang issue. It is entirely appropriate that the CMC be working with the government in executing the new powers we have received as a result of the amendments to the

Crime and Misconduct Act and other new legislation. I can confidently say that this consultation has remained focused on the job at hand, which is disrupting the activities of the criminal motorcycle groups.

The CMC also has a misconduct portfolio, which is charged with promoting a trustworthy public sector and investigating serious official misconduct in the public sector. It remains separate from the consultation our crime fighters are having with government. I think it is important for this context to be understood. In an organisation like the Crime and Misconduct Commission, there will be times when consultation with government is required and definitely time when consultation with government or other public sector officials is not.

I indicated in the recent public comments I made that the new legislation is appropriate and the commission supports that legislation. It is the role of the commission to be a crime-fighting body, and that legislation I regard as being relevant to the functions of the Crime and Misconduct Commission. As an independent statutory officer I may agree or disagree on any point with the government, the opposition or anybody else, and I do not renege from that. I certainly do not accept that being in an independent role requires me to disagree with the government on every occasion or that I must remain silent.

I will make a comment about the staff at the CMC. They continue to operate in a very professional manner throughout the whole organisation. I am confident that our independence has not been lost; nor has our objectivity on matters been compromised. In the two months since our last public meeting the commission has continued to work hard to combat major crime, promote a trustworthy public sector and protect witnesses in Queensland.

Madam Chair, I would like to take this opportunity now to briefly update you and the committee on the work the CMC has been doing in three significant areas: our work in the area of criminal motorcycle gangs, the tabling of two public reports by our misconduct area, and implementing the recommendations of the recent inquiry and review of the CMC.

One of the CMC's core functions is to combat the activities of organised criminal networks including criminal motorcycle gangs. In recent weeks the CMC has joined other state and Commonwealth agencies in the broader law enforcement response to criminal motorcycle gangs in this state. While we are not able to comment on current operational matters, I would like to take a moment to outline for the committee some of the activities which have been undertaken in recent weeks.

Last month in particular we hosted a visit by the Premier and the Attorney-General to our offices and gave them a comprehensive briefing on the CMC's crime-fighting role. As you are all aware, parliament has passed legislation giving the CMC additional powers to investigate the activities of CMGs. The details of those increased powers are available on our website for members of the community to read. The state government has outlined also additional funding which will be provided to the CMC in the crime-fighting task of criminal motorcycle gangs which is on top of our existing funding allocation and will significantly enhance the ability of the commission to tackle the activities of criminal motorcycle gangs throughout Queensland.

I can report to the committee that during the reporting period the Crime and Misconduct Commission has held closed coercive hearings in support of investigations in a wide range of matters including criminal motorcycle gangs but not exclusively. They are outlined in our public report.

The commission's strategic intelligence unit informs our understanding of organised crime markets and identifies priorities, which helps to drive our work in the field of organised crime. Early last month the intelligence unit distributed to our law enforcement partners a report on changes in criminal motorcycle gang culture in Queensland and the implications for law enforcement. This report is helping to inform the broader law enforcement response to criminal motorcycle gangs in this state. I have a copy of that paper, which I will provide to members of the committee in the private session later.

Madam Chair, in addition to our work in the organised crime space I am pleased to inform you that the Crime and Misconduct Commission's proceeds of crime team since we last met has obtained 15 restraining orders over property valued in excess of \$1.87 million. Our Cerberus team has charged three alleged child sex offenders with 32 offences including rape and indecent treatment of a child under the age of 16. The Crime and Misconduct Commission continues to help law enforcement progress investigations into vulnerable victims including the suspected murder of two babies and grievous bodily harm of another two babies.

As you can see, the CMC will continue to use our specialist powers to respond to high-threat criminal networks and individuals, including criminal motorcycle gangs, in an effort to stamp out serious criminal activity in Queensland.

Turning to some significant misconduct matters now, I am pleased to inform the committee that since we last met the CMC's public reports on the University of Queensland enrolment matter and also Queensland Health fraud have been tabled in the parliament. The Crime and Misconduct Commission believes that there was considerable public interest in placing on the record for the first time what actually happened in relation to those two important public sector agencies. We strongly believe that the public sector in Queensland can learn significant lessons from those reports.

There has been some public debate and criticism of the CMC for referring some matters back to public sector agencies to investigate rather than retaining them within the CMC for investigation. This issue was raised again following the release of our Queensland Health report. I would like to draw the committee's attention to pages 14 to 16 of our public report, where we have explained how we are required to deal with complaints under the legislation and why the CMC refers some matters to public sector agencies.

Finally, I would like to take a moment to update the committee on the progress we have made following the recent review and inquiry. The administrative review of the CMC is underway. Mr Mick Keelty, who was an observer on the implementation panel, is leading that process. I can also advise that during the reporting period the CMC has made significant progress in implementing the recommendations from this committee's inquiry into the release and destruction of Fitzgerald documents.

I would like to take this opportunity to mention that this will be the last of meetings I have mentioned with Commissioner Nase. Mr Nase has brought extensive legal knowledge and expertise to the commission and has made an invaluable contribution to the work of the CMC during his term. On behalf of the commission, I would like to take this opportunity to thank Philip for his outstanding service to the CMC and the wider Queensland community over the past five years. We wish him the very best in the future. That concludes my opening statement, Madam Chair. The commission's senior staff and I look forward to answering your questions today.

CHAIR: Thank you very much, Dr Levy. Obviously I have a couple of questions in relation to your article in the *Courier-Mail*, because it has certainly drawn a lot of comment, both publicly and privately. Initially, could you advise whether the *Courier-Mail* approached you for the opinion piece or was the approach from your office?

Dr Levy: The approach was from me, from the commission.

CHAIR: What motivated that?

Dr Levy: Discussions within the—there had been a lot of media about this and we discussed whether it was appropriate to put out media and who might actually put that out. It was going to be either the assistant commissioner of crime or myself. I chose to do this one first, but there will be other media we will do on this, more about the substantive matters as far as we are able to talk about them as we have experience with the criminal motorcycle gangs.

CHAIR: So you will publicly update the community on the effectiveness of the legislation; is that what you are saying?

Dr Levy: We are certainly going to update them on the progress and the activities that we have in our hearings in terms at least of the numbers of matters we do, the number of hearings, the number of hearing days, and relevant matters but not obviously operational data.

CHAIR: You talked a little bit in your opening statement about the CMC being able to agree or disagree with government policy. I am very conscious that we are not empowered to question you in relation to government policy. Can you specifically address the concern that has been articulated publicly that that opinion piece has somehow undermined or has undermined the independence or the perceived independence of the CMC?

Dr Levy: Madam Chair, I have been back through that article on more than one occasion. I accept some people might join the dots between some things I said and say that somehow it seems to indicate some favouritism to government, but I do not think it does nor was it intended to. My intention with the article was to add something else to the debate which, up to that point, had merely just been idiosyncratic views, as far as I was concerned, either about the government or about lawyers or the legal profession, the legal system. I regarded the criminal justice system, the

systemic aspects, also required us to focus and draw to the public's attention that there is this balancing effect between the rights of individuals and the rights of society. That was one of the objectives I had in some of the comments that I made.

However, in relation more specifically to the comments about the legislation, I do not see that I have commented on anything that is not within the role of the CMC. In fact, given that we have these new powers, the crime function, of course, is different to the misconduct function, but it is a very important function. In the paper that I will distribute to the members of the committee later, you will notice that there is an increasing spreading of the tentacles of criminal motorcycle gangs into some of their activities. That, I think, will be informative both for the members of the committee and also, I think, the public are entitled to know that this is not just a flight of fancy that the commission at least is getting involved in. The commission, as you know, is there by and large not only to have a crime fighting role but we are by and large in support of what police do and where police's ordinary methods cannot be successful.

What I have commented on is merely the fact that there is evidence that criminal motorcycle gangs have got out of control and there is evidence, I think, that legislation has been attempted elsewhere, both in Australia and overseas. It is also clear that this is not something that has just occurred in the last one or two or three years. This has been going back for quite a long time. Indeed, legislation of this nature the South Australian government dealt with about 10 years ago and the Victorian government also had an interest in it. If you look at overseas trends, many countries have had to deal with exactly the situation that has occurred here. In particular, you can look at the United States or England or the European countries and there is evidence that they have had to confront similar things over a number of decades and there have been bodies and legislation to deal with that.

There is also, I think, in relation to criminal motorcycle gangs I believe characteristics, you might say, not just that they are motorcycle gangs but they are actually criminal cartels. If you actually look at the activities they get involved in, it is very similar to criminal cartels and activities in other jurisdictions in Australia and overseas that they have had to deal with.

My article or the opinion piece that I put out is within the bounds of the role of the CMC. I noticed one comment in the media yesterday allegedly attributes to my article that I made comment about the Dangerous Prisoners (Sexual Offenders) Act, which I had not, unless I had taken leave of my senses, but I went back to my article and I have not. I refute any criticism that somehow I have got into the fray of the role that judges have in courts. Perhaps I will leave that just for now, Madam Chair.

CHAIR: I have one follow-up question and I know others have questions. Perhaps if I can address this, too: you stated that the outlaw motorcycle gangs or groups—whatever they are being called now—are out of control. Prior to your time and since your time, that has not been overtly evident in reporting to the committee. Could I ask perhaps Ms Florian and Mr Scott, in their roles and responsibilities, to comment on that? In the article it talked about 'out of control', I think, too and you have made that comment here this morning. There is a lot of comment on OMGs, obviously, in private and public meetings with the committee. I am interested in whether it has accelerated in the recent past or whether it has been out of control but perhaps that has not been indicated to the committee over the last 12 to 18 months at least?

Mr Scott: Thank you, Madam Chair, for the question. Michael Scott, Acting Assistant Commissioner, Crime, for the record. We have looked at criminal motorcycle gangs over the lifetime of the CMC. It is an area that we have constantly monitored. Our intelligence assessments over that period suggest that in recent times they have increased their involvement in organised crime, involving increasing cross-jurisdictional cooperation with gangs interstate. They have broadened their membership certainly in recent years, and that is a theme of the paper that you will be seeing in the private session. There has been a change in their internal culture. There is a change in their internal demographics. Younger members have come on board. They have been actively recruited from prison and from other feeder groups. That is another theme of the paper that has been recently published by the CMC in a law enforcement context. We have assessed that the changes in their internal culture have resulted in them exhibiting an increased propensity to engage in, firstly, illegal drug activity in Queensland and interstate and in the use of violence, particularly firearms related violence. In recent times, we think that is of significant concern. The paper that was, in fact, prepared prior to the incident at Broadbeach on 27 September and we accelerated its distribution to our law enforcement partners immediately thereafter.

We have always been active in the CMG space. You will be aware that we have a general referral specific to criminal motorcycle gangs. Our Hydra referral was put in place as far back as 2006. Members may also recall in about that period, 2007 and '08, because it was publicly reported on in our annual report of that period, we were very active in the public displays of violence between the different gangs in that period. Members will recall the very serious and concerning affray that occurred on the highway at Ningi on the way to Bribie Island between the Rebels and the Bandidos, resulting in persons sustaining life-threatening injuries, grievous bodily harm. Shortly thereafter, there was a retaliatory attack upon the Rebels clubhouse at Albion. It was fire bombed. We conducted extensive investigations in that period, holding hearings into those matters. That is a matter of public record. They were particularly successful. The perpetrators from the Bandidos in that arson were arrested and successfully prosecuted. Various other charges arose from the array.

In our organised crime work since that time, in our covert investigations that are now concluded, many of them had a strong CMG focus. The networks that we were targeting particularly, involved in drug trafficking and money laundering in Queensland, involved both members of CMGs and associates of CMGs all engaged in very high level criminal activity. We have regularly reported to the committee on the work that we have done in that space.

CHAIR: Thank you. Ms Florian, did you want to add anything?

Ms Florian: No, thank you.

CHAIR: The Leader of the Opposition has some questions.

Ms PALASZCZUK: Thank you very much, Chair. Good morning, Dr Levy.

Dr Levy: Morning.

Ms PALASZCZUK: First of all, could I ask you, Dr Levy, did you have any discussions with anyone from the government before you appeared at today's hearing?

Dr Levy: Not about this hearing or not about the article I wrote?

Ms PALASZCZUK: Either/or.

Dr Levy: No.

Ms PALASZCZUK: And before you submitted the article—we will talk about the opinion piece now—did you have any discussions with anyone from the government?

Dr Levy: No. It is my composition.

Ms PALASZCZUK: Before you sent the article to the *Courier-Mail*, you did not have any discussions with anyone from government?

Dr Levy: No.

Ms PALASZCZUK: Dr Levy, I now want to go particularly to the article itself. I want to quote from the section that is causing, I think, a lot of concern in the community. That is—

There are things we can do. And the Attorney-General and the Premier—with the support of the Queensland Government—are taking the strong action that is required.

Dr Levy, why did you write those particular words?

Dr Levy: Well, as a matter of fact, as I said, I regard that there is a problem. It is the role of the CMC. And the media about it, as I said, was really telling the community either listen to lawyers or you listen to the government. I regarded that while there was another dimension of that and the justice system which requires, as you know, parliament to make laws and judges actually interpret and decide matters made by parliament. But where there is some either inadequacy or some change required in the law, then parliament does that. Clearly, my observation of what we now know of motorcycle gangs that the laws are inadequate or rather have been inadequate and probably have been for some time. For example, when have we ever seen here previously an insurrection of 50 people riding on motorbikes and bailing up outside a police watch-house and also the actual encroaching on the space where people are actually sitting privately in Broadbeach. If this starts to be a trend—and clearly they were sending a message to the legal authorities. They were sending a message to the police, which is exactly what criminal cartels do. They are not worried about secrecy. They are actually out there to demonstrate that they are in control.

Ms PALASZCZUK: But, Dr Levy, I put it to you that this is clearly showing bias, and under section 57 of the act the commission is to act independently at all times. Are you aware of section 57 of the act?

Dr Levy: Yes, I am. I do not see anything that is not independent.

Ms PALASZCZUK: And what does that section say?

Dr Levy: I have not got the words in front of me but clearly—

Ms PALASZCZUK: Well, I can help you. It says—

The commission must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest.

What made you think it necessary to spend your taxpayer funded time entering the public debate in support of the government?

Dr Levy: I am an independent statutory officer. Ever since this commission has existed chairpersons have made comment about matters publicly. To describe merely the fact that the government has drawn legislation which I agreed with does not mean that I am not independent or somehow I am in the hands or in the pockets of government.

Ms PALASZCZUK: Could you please identify which of the commission's statutory functions you were discharging when you wrote the article?

Dr Levy: Clearly I am informing the public about an independent view from the commission given that there had been a view out there—one put by government and one put by lawyers.

Ms PALASZCZUK: Were you speaking in a private capacity or were you speaking as chair of the CMC?

Dr Levy: Well you could say I was speaking as both. I am entitled to a private view but equally, as far as the formal role of the CMC is concerned and my role as chairperson, I believe it is within the scope of the functions of the commission. So I regard that not as being biased in any way. That is a description, just like I have described some other things there about the justice system.

Ms PALASZCZUK: Are you aware of what Tony Fitzgerald has said in relation to the comments that you have made?

Dr Levy: I have seen what he said.

Ms PALASZCZUK: Are you compromising the independence? I go back to what statutory function were you discharging when you wrote this article?

Dr Levy: Apart from a specific matter of prosecution, I was discharging those broader functions of the commission, one which is—

Ms PALASZCZUK: You clearly indicated your support for the government.

CHAIR: Leader of the Opposition, if you could just let Dr Levy finish.

Dr Levy: Well, I am not quite sure how much clearer I can make it. I regard it as part of the broad function of the commission. The fact that I made a comment like that—chairmen in the last 20 or 25 years have made comments about legislation and governments. They might not have all agreed with them, of course.

Ms PALASZCZUK: Opinion pieces supporting the government?

Dr Levy: Sorry?

Ms PALASZCZUK: Can you please present those opinion pieces that have supported the government?

Dr Levy: I did not come armed for that, no. But if you wanted me to go through the library I will endeavour to find some for you.

Ms PALASZCZUK: That would be great. Section 57 of the Crime and Misconduct Act requires that the commission act independently at all times. Tony Fitzgerald has said yesterday, 'The Crime and Misconduct Commission will have outlived its usefulness if it loses its independence.' The article you wrote for yesterday's *Courier-Mail* might create a public perception that the CMC and you as chair are not acting independently.

Dr Levy: Well, could I say undoubtedly some people have not agreed with me, but equally on both sides of this debate it is a rather heated one and there are people for and against it. So I cannot very well please everybody. Merely because Mr Fitzgerald made that comment I do not think means that I am not independent.

Ms PALASZCZUK: But there could be a public perception that you are undermining your statutory function under section 57 of the Crime and Misconduct Act that the commission should act independently at all times.

Dr Levy: Well I do not accept that; I am sorry.

Ms PALASZCZUK: I put it to you that article is clearly showing bias.

Dr Levy: Well I am sorry; I cannot see that and I do not accept it.

Ms PALASZCZUK: Well there are a lot of commentators that are saying that at the moment.

Dr Levy: There are lot of commentators saying the opposite too, though.

Ms PALASZCZUK: Well the opposition has grave concerns, Dr Levy, that by you submitting that article that is clearly showing bias could make your position untenable as acting chair of the CMC. You have failed to tell me where the statutory function is that enables you to print such an article. You have failed to show me any other opinion pieces by previous chairs of the CMC, and there is clearly a public perception that you as chair are not acting in accordance with the act and being independent.

Dr Levy: Being independent I think requires me to make a judgement and, if required or if I feel it is appropriate, to make comment. I do not regard that as being anything either for or against the government. Merely because I say we now have legislation which the government has put in and we agree with it, that is not an absolute or political comment.

Ms PALASZCZUK: But you did not talk about the legislation. You did not talk about the exercise of the functions. You clearly stated here that you supported what the Attorney-General and the Premier were doing. You were writing it more from a legal perspective as perhaps a former law professor rather than from the perspective of the independent office that you hold. Please tell me, Dr Levy, where is the statutory function that enables you to make these comments?

Dr Levy: Well I do not have a copy of the act in front of me.

Ms PALASZCZUK: Well I suggest if someone could please get it—

CHAIR: Order! Can I just say I think that on this point about independence the Leader of the Opposition has made a point. The committee has not deliberated on the matter but questions are valid. But I think Dr Levy has also answered that, and what is going to happen is that the same things are going to be said over and over again. The member for Bundamba had a question.

Mrs MILLER: Yes, I have a question, Dr Levy, as deputy chair of this committee. You have stated that the outlaw motorcycle gang laws have been inadequate for some time. Why hasn't this committee been told that? This is the oversight committee. The PCMC is the oversight committee of the CMC, yet you have not advised this committee that these laws have been inadequate at all, let alone have been inadequate for some time. So why hasn't this committee been advised of this?

Dr Levy: They have not been advised certainly in the last five months. I cannot say what happened before that. But, I suppose, logically though—

Mrs MILLER: But we have not been advised of that. Previous chairs, Dr Levy, have not advised us of that.

Dr Levy: Okay.

Mrs MILLER: So I am just asking: did it suddenly come up in the last couple of weeks? It just seems extraordinary to me for you to make that comment that the laws have been inadequate for some time. This committee, which is bipartisan, is the oversight committee. Yet the CMC has not, to the best of my knowledge, advised us that these laws have been inadequate. I think that is a failure of the commission to not have advised us of that because this committee is probably the most powerful committee of the Queensland parliament. If that was the truly held belief of the commission, we should have been certainly advised of this whenever that view was formed by the commission.

Dr Levy: Mr Scott has elaborated on some of the statistics and some of the trends. Perhaps previously they have not been so significant that one would have expected that there were going to be motorcycle gangs raiding public restaurants or perhaps riding on en masse outside the Southport courthouse. But now that that has occurred—I have actually looked at some of the research elsewhere and I think there obviously has been. These things just do not occur merely by chance. Having been at the university on the Gold Coast, I saw an increasing presence, although I have never been in a restaurant when they have raided it. But clearly there has been an increasing presence, in my view, over the last decade or so.

Mrs MILLER: So why haven't we been told? This is the parliamentary oversight committee. If you are saying that you believe that this has been increasing—and I know you have not been at the CMC long; I accept that. But no-one from the CMC has actually advised this committee that there

has been inadequate legislation for some time. I would have thought that if it was the case—and it was not a sudden thing just because the government decided that they needed a diversion tactic—this committee should have been advised of the concerns of the commission. This committee, with our powers, could have taken those matters on board as well. We could have actually reported to the parliament in relation to this matter.

It just seems to me that all the ducks are lining up—the government wants to have a go at the bikies et cetera and suddenly, as acting chair of the CMC, you are saying that the laws have been inadequate for some time. Basically, to me, it just seems that all the ducks are lining up together. The CMC is not independent, in my view, at this point in time because the CMC has failed in its duty to report to this committee about the inadequacy of the laws, if it is indeed true that the commission as a whole believes that these laws have been inadequate for some time.

So my view is that the commission has failed in its statutory duties to this parliamentary committee and it has also failed in relation to its independence, particularly, Dr Levy, given the article in the paper. It is not the view—my view, in particular, as deputy chair of this committee—that we also find out the views of the chair of the CMC by opening up the *Courier-Mail* as well. I would have thought that you would have given respect to the parliamentary committee here and that you would have reported your views to this committee today and then perhaps would have written an article or whatever for the *Courier-Mail* or whatever else. Dr Levy, you failed to give respect to the chair and the bipartisan members of this committee as well.

CHAIR: Do you want to respond to that, Dr Levy?

Dr Levy: Yes, Madam Chair. The comments I made about my observations about the increasing presence of motorcycle gangs on the coast were personal views, personal observations, based on the fact that I spent a lot of time on the coast. It was not necessarily anything that actually arose in the course of my time at the CMC. In fact, I think it would be difficult for the commission to be able to predict all of a sudden this thing which was a growing trend. It might have been evident in statistics but not one of those things that is significant that all of a sudden one would think that we would need to wave flags and say either, 'New legislation is needed,' or 'This is an imminent threat.' Sometimes with these things, an imminent threat, there is an impetus that actually draws it to everybody's attention. So that is the basis of my comment about the increasing presence on the coast. I cannot attribute that to the commission, nor would I blame the commission for that.

As to whether I should have brought this to this committee first, well, I accept perhaps that is my error. But in the blood and heat of battle there day by day and reading matters in the press and other things I deal with at the CMC, I did not really regard that if I was going to put out, as an independent statutory officer, a comment about that, particularly when I saw that it was perhaps something that was not a fully rounded argument.

Mr CRANDON: May I interrupt for a moment? I just need to advise that I need to leave the meeting for a short while. I will be returning as soon as I can.

CHAIR: Thanks, Michael. Did you have any questions in relation to this matter?

Mr CRANDON: No. At this juncture I have listened to carefully to everything and I will be back as soon as I can.

CHAIR: Thank you. Sorry, Dr Levy.

Dr Levy: I was just about to finish by saying perhaps I should have brought it to this committee. It is not something that, I guess, came up on my radar screen. Sorry about that.

Mrs MILLER: Can I just ask, Dr Levy, that you please give the PCMC the respect that I think it deserves and the respect that the parliament has given this committee. We are a bipartisan committee and we believe that we were treated disrespectfully in relation to that matter—certainly myself as the deputy chair.

Dr Levy: All right. If that is the perception, I apologise for that. That was not intended.

CHAIR: Peter Wellington, did you have any questions on this matter?

Mr WELLINGTON: Yes, I do. Dr Levy, I note your public comments on behalf of the Crime and Misconduct Commission that the commission supports the legislation. In your role as chairman, do you have an opinion in relation to the penalties under the new legislation by way of comparison with the penalties for other serious offences in the Criminal Code? By way of comparison, I see many penalties in the code being there for the purpose of a deterrent. The most serious offences

like murder are at the highest level and more simple offences like vagrancy or the like are much more minor. Do you have an opinion in relation to the new penalties contained in the government's new legislation which you are saying the CMC supports? What do you feel?

Dr Levy: Good question, Mr Wellington. While I say we support the legislation, I was not going into every last detail of things like penalties. Clearly, they are very heavy. They are magnified in comparison to similar offences in the code. But I was referring only to some of the powers at least to be able to intervene and for police to be able to have contact and stop these bikies and therefore get some intelligence. As far as the penalties are concerned, that is a matter of policy for government. It is not really a role for the CMC. But they are certainly very heavy; I certainly acknowledge that.

Mr WELLINGTON: Madam Chair, if I can follow on. Dr Levy, but that goes to the very point of the concern that you have heard from some committee members this morning about you using your position to effectively become a puppet for the government. It is on the public record this morning about the role you see—this article in the *Courier-Mail* and your public comments—in terms of informing the community. Quite frankly, I believe there are some major concerns with the severity of the new penalties.

A person whom the police may want to apprehend or investigate under the new government legislation may choose to take a position simply because the penalties are so serious. They may choose to form the opinion that they are going to shoot it out because quite frankly they will compare the penalty for murder with the penalty under the new legislation. I would have thought the protection of our law enforcement officers would have been paramount.

You have just said that you have some reservations or some conditions in relation to your opinion piece. Quite frankly, with respect, I think your opinion piece was too long. Yes, you could have made a comment, but I no longer have confidence in the independence of you as chairman of the peak crime fighting organisation.

My final comment is that, in my view, I believe you have compromised that position. I support the deputy chairman's position that there has not been an articulation of the build-up of this threat that you have articulated in the opinion piece presented to our committee, and we are the oversight committee. Effectively, it raises in my mind, 'we will tell the oversight committee what we want to tell them.' Are we being fully informed as the legislation requires our oversight committee to be? That is my two bob's worth.

Dr Levy: I note your points. I am not going to comment on matters of government policy, but let me say this about the article. The aim of the article, which will probably be intuitively obvious, was not to dissect every aspect of the government's legislation.

Mr CRANDON: I am returning to the meeting.

CHAIR: Thank you, Michael. Dr Levy is just responding to questions and comments from Mr Wellington.

Dr Levy: The article I wrote was somewhat of an information piece as well. In fact, the example that perhaps some people might shoot it out with the police—I was trying to make a similar point. In fact, I gave an example in there of a lady who had been convicted of murder in California. In fact, I was there at the time it happened. As a consequence, the reason I used that example is to point out that if in fact legislation is not effective—if it is too lax or even too heavy perhaps—there may be a risk that the bikies might feel under threat.

More importantly, and my point was this: if laws are seen to be inadequate and too lax then what happened in America could well happen here. That was what I am trying to point out. Sometimes people will take the law into their own hands. I saw something only in the last couple of days when I was looking at material about this, in Mexico there have been criminal cartels operating for some time. There are now rebel gangs, vigilante groups that have now formed because they do not regard the justice system as being sufficient to protect people. We are merely only saying that it is either the lawyers' view or the government's view. I think there is the community's view as well. That is the point I was trying to make.

Laws need to take account of other views as well. I say that this is not an exact science. It is hard to control human behaviour, particularly where people and communities get very uptight and think that they are not protected. They will feel under threat. It is not only bikies, it is also the community we have to consider. That comes back to the point I was making.

I was trying to differentiate the rights of an individual versus the rights of the rest of society. That is the balance that has got to be struck. Consequently, in my view, having new legislation, stronger legislation was required because otherwise this thing could go on and on for ages. Clearly, Brisbane

what we have seen up to now is that in the short three weeks or so that we have been conducting some hearings you can see that it is having some effect on the motorcycle gangs because many of them are turning in their patches and closing clubhouses.

At least as far as them taking over restaurants or riding en masse to places of lawful authority—that is not to say that could not happen again—is less likely to occur. That was the point I was making.

Ms PALASZCZUK: Dr Levy in response to the member for Nicklin before you said, 'I am not going to comment on government policy.' Dr Levy, by publishing that opinion piece—an opinion piece which you claim was not a personal view but was indeed your view as the CMC chair—I put it to you that you have compromised the independence of the CMC.

Secondly, I take on board what the deputy chair has said very clearly. That is that as chair of the CMC you have failed to advise this committee of the escalating violence and the escalating issues of outlaw criminal motorcycle gangs. You have failed and you said today in your evidence that you did not disclose that to the committee. I consider that to be a very, very severe consequence.

Thirdly, you have not stated to me today—

Mr CRANDON: Madam Chair, I would just like to indicate that once the Leader of the Opposition has had an opportunity to round out her comments that I would like to make some comments and also perhaps pose a question.

CHAIR: There are two ahead of you, Michael.

Ms PALASZCZUK: You have not been able to disclose to me or this committee the statutory function that enabled you to publish this opinion piece. This opinion piece is clearly biased and you are commenting directly on government policy. Dr Levy, the opposition no longer has any confidence in you continuing as the acting chair and I believe that your position now is untenable. I also note that Peter Wellington, the member for Nicklin, has also said that he no longer has confidence in you.

Dr Levy: I note your comments. I do not agree that my independence or the independence of the commission has been breached. The fact that—

Ms PALASZCZUK: That is biased.

CHAIR: Excuse me, just let Dr Levy finish.

Dr Levy: That is your personal view. Unfortunately, with all of this exercise there are many personal views and most of them are either one or the other—they are one extreme or the other. I do not accept that it is biased. The fact that all of this happened in three weeks, certainly I did not advise the committee. I have noted that and I have apologised to the committee if you expected that. I am not quite sure that that would have been obvious to everybody.

CHAIR: Can I make it clear that as a committee we have not had a conversation about the article other than informally. As the Leader of the Opposition made clear, her view is the view of the opposition. That was clear, and I appreciate that. The member for Greenslopes has some questions.

Mr KAYE: This is not directly related to that, but it is part of it. The CMC obviously from time to time sees some necessity for legislation to be amended or perhaps might see the need for some new legislation. How would you actually go about communicating that?

Dr Levy: I am not sure that is something that would regularly occur at the CMC. I have written to the Attorney-General recently suggesting a number of amendments, but they are to Crime and Misconduct Act. In fact there is still another group of provisions we would like to write to him about around powers that the commission has. We have not got around to finalising those.

Other than the Crime and Misconduct Act, and I am just speculating here—it is not based on specific experience about it—I would think probably that if we saw some inadequacy, for example in the legislation dealing with police discipline or some other act where we saw that there was a greater risk of fraud or corrupt conduct, then I would think that would be one of those issues that the commission could and should right. It has this prevention function as well. It is not one of those areas, subject to what anybody else on the commission might say if they have some other experience, or major functions where we are trawling through legislation all the time to see if we think it could be improved. In relation to the University of Queensland public report we have suggested an amendment to the legislation.

Mr KRAUSE: Dr Levy, do you welcome and does the commission welcome the introduction of the new legislation to deal with criminal motorcycle gangs that has been passed in the last month?

Dr Levy: I have had—

Mr KRAUSE: Can I refine the question, please?

Dr Levy: Yes.

Mr KRAUSE: In terms of enabling the CMC to be able to deal with its major crime functions to prevent organised crime and to combat criminal motorcycle gangs, does the CMC welcome the additional powers and legislative provisions that have been passed in the last month?

Dr Levy: I think I can safely say yes. The acting assistant commissioner crime and myself and other officers of the commission had an opportunity to comment on the legislation that was being drafted, and we gave some advice, but I think by and large the powers and the changes to our act were such that if the Criminal Organisation Act was amended and other statutes amended and if this is a major issue, which clearly it is, and if the police are going to be out there trying to bring people in for coercive hearings, then if we did not have the legislative changes we had then the Crime and Misconduct Commission would not have been able to be effective.

Mr KRAUSE: So in the short time since the legislation's passage, are you able to inform the committee about the progress that has been made, or has there been an improvement in the operations of the CMC as they are able to deal with CMGs.

Dr Levy: I think maybe Mr Scott might be better to make specific comment about that.

Mr Scott: Thank you, Mr Krause, for that question. Perhaps I could clarify this aspect of Dr Levy's response. The commission's engagement with government and the conversation about the law reform that has happened since 27 September has been limited to amendments to the CM Act and they are the only matters I would personally be prepared to comment on. I have no intention of commenting on the wider amendments to other legislation. That is a matter for government. I am determined not to be diverted from the substantive operational activities that my office is conducting by getting embroiled in a political debate. I am not interested in that. With that caveat, we did have a conversation with government about amendments to our Act, and particularly this was in the aftermath of what happened at Broadbeach. We identified that there were certain jurisdictional limitations in our Act that would have prevented us immediately invoking our hearings power, for example. The offence as initially charged by the police was one of affray. That, until recently, was a one year offence—carried a maximum sentence of one year. Under our major crime jurisdiction, organised crime by definition requires a seven year offence. So that was an immediate problem to us. We have for some time looked closely at the workings of the Australian Crime Commission; how they operate in terms of criminal motorcycle gangs and other forms of organised crime. They have investigative hearings in the same way that we have had since the inception of the CMC, but they have also got this other creature called an intelligence hearing which they have used to great effect in various areas of organised crime. So in our conversation with government we identified, in the aftermath of the recent incidents, that that would be a very useful tool for the CMC also to have to sharpen its focus upon criminal motorcycle gangs. For example, there has been a lot of publicity about the patching over of the members of the Finks, I think, into the Mongols. Now, that is a phenomenon that we would very much like to explore using our hearings power, but that in itself is not a criminal offence or criminal activity so using our traditional powers we would have been very constrained in exploring that phenomenon, whereas the Australian Crime Commission, of course, could use its intelligence powers to, of course, explore such a thing. So they were the issues about which we were engaging with government to sharpen our focus in relation to our own legislation. Personally I am not going to comment, be drawn into commentary, upon other aspects of the legislative package that the government has introduced to Parliament.

Mr KRAUSE: That is fine. That is your prerogative. Can I ask though, do the suite of tools you have available to you now better enable the CMC to deal with criminal motorcycle gangs?

Mr Scott: I think so. One of the other features of the amendments was the limitation that was put upon the reasonable excuse provisions within the Act. Up until these amendments any witness at a CMC hearing could claim a reasonable excuse for not answering a particular question at a hearing. That would then be ruled upon by the presiding officer and if the ruling was adverse to the witness the witness had a right of appeal to the Supreme Court against that ruling and the litigation could go on endlessly, derailing the substantive hearing in question. We had an experience last Brisbane

year, and this is on the public record because it is in a judgment of the Court of Appeal, where two witnesses who were associated with a criminal motorcycle gang claimed reasonable excuses not to answer particular questions. A ruling was made adverse to them in the hearing. They appealed that to the Supreme Court. They prevailed at first instance. We appealed that to the Court of Appeal and we were successful in the Court of Appeal. Those parties have since applied for special leave to the High Court. So against that background, when we were looking at how we can sharpen our attack upon criminal motorcycle gangs, that was an obvious area to suggest that that whole issue of reasonable excuse had to be looked at. The upshot of all of that is that participants in a criminal motorcycle gang, and only participants, may not claim a reasonable excuse based on a fear of retribution to themselves or others from other members of a motorcycle gang. We think that is a tool that will help us considerably in the future in our hearings.

Mr KRAUSE: It will certainly streamline that process.

Mr Scott: It will.

Mr KRAUSE: Thank you, Mr Scott. If I could just go back to Dr Levy if I may. Dr Levy, I have a very contrary view to other members of the committee about the contents of the *Courier-Mail* article. I do not think that it has compromised your independence or the independence of the commission. I do not think that is a reasonable assumption for anybody to make because, as we have just heard from Mr Scott, what you are saying essentially, in my view, is that you agree that the tools that the government has given the CMC are helping the CMC to combat criminal motorcycle gangs. As the head of the CMC I think that is a perfectly factual statement to be able to make publicly. In fact, the Leader of the Opposition has gone to great lengths to say that what you did by writing an article was not within your functions, but I think if you do look at the act part of your role, part of the commission's role, is actually to provide information to the community about your prevention function, and in this context I think informing the community about the CMC's view of the legislation is a legitimate thing to do and increases the confidence of the community in the CMC that they are dealing with their major crime prevention functions adequately and they have the tools to do so. So, I just wanted to put those comments on the record and thank you, Mr Scott and Dr Levy, for answering my questions.

CHAIR: Thank you. Member for Coomera?

Mr CRANDON: Thank you, Madam Chair. I have once again listened intently, and my apologies for not being able to be in attendance. I can assure you I will be in the precincts within the half hour to carry on or to further discuss this matter. But let me just say, having listened to the debate as it turned out to be, first of all my view is that the Leader of the Opposition is completely and entirely hypocritical, in my view, in making the statement that she is making.

Ms PALASZCZUK: That is out of order.

CHAIR: Michael, excuse me, let us just keep to the facts.

Mr CRANDON: Yes, I am keeping to the facts, Madam Chair.

CHAIR: Let us deal with the issue.

Mr CRANDON: I am dealing with the issue and I just wanted to make the point that we have a situation where we have an out-of-control criminal motorcycle gang element in our society. When we went to the parliament to debate the new laws, we were one. The parliament supported as a whole the new legislation. We have seen over time many, many articles and comments from senior police in relation to their need for this type of legislation. We have seen many differing views in the media, and the most striking of those is the view that we have seen in the media from the opposition given that they fully supported the legislation on its introduction to the House and that is why I am saying that my view is that what is being said now is hypocritical.

Dr Levy, in my view, has to inform the public of the CMC's opinions and views on matters of crime in this state. He has made it clear to the public in the article in the *Courier-Mail*. It has been a well balanced article and one that comes from someone who is eminently qualified to give serious consideration to these matters, not just as the CMC chair, but clearly in his background in other areas. Dr Levy is showing a united front with the government of the day, with the opposition, when they voted this legislation in, certainly with the police in the state of Queensland. And we have to send a clear message to these criminal motorcycle gangs that we are one, we are absolutely one on making sure that they are stamped out, that they no longer pose a threat to the public, to the people of Queensland.

I am a member from the Gold Coast, as you all know, and I have got to tell you that it is an horrific thought to think that I could be in a restaurant with my family on the Gold Coast enjoying myself only to be confronted by a mass invasion of criminal motorcycle gang members threatening an individual within the precinct and then from there creating the ruckus that was created and then to have the audacity to confront the police at Southport Police Station in the way that they did as a show of force. What message do we want to send to the people of Queensland? That we are going to tolerate these things? No, not at all.

CHAIR: Michael.

Mr CRANDON: If I can just round out, Madam Chair, and say that in my view it is time for everybody in power, in a position where they are able to send the message to the community, we need to be one in this, we need to be on the side of right. We are on the side of right. Dr Levy is on the side of right. We are determined to stamp this element out and I thank Dr Levy and I can tell him that this side of the committee, as in the government members of the committee, are 100 per cent in support of him.

CHAIR: Thank you for that. We are a bipartisan committee. Can I just correct one statement. You said that the parliament as a whole supported it. I would just correct the record to say that there were divisions in that piece of legislation. I know because on one of them I sat on my own. In terms of the voting patterns, they are public on *Hansard*. But there was not wholesale support for the legislation. There was concern and there were divisions. Rather than go into the detail, that is all available on *Hansard*, but I just make that correction. It is an emotive issue and I appreciate that everybody has had the opportunity to speak today, that you have responded, those who have, and I thank you for that. There are some other matters that we need to deal with in terms of your public report. Firstly, can I ask whether there has been, to your knowledge, any progress—sorry, I should introduce it. Mrs Judith Bell, her term as part-time commissioner has ended, and Mr Nase is finishing, as you said, this month. To your knowledge has there been any progress in reappointments?

Dr Levy: I cannot say there has been any obvious progress, but I have again been in contact with the minister's adviser and he assured me that there would be an appointment made soon.

CHAIR: I have actually raised with the Attorney-General, too, that under the act there are certain functions with the CMC that you cannot carry out without a full complement of commissioners.

Dr Levy: I have mentioned that to his adviser also.

CHAIR: Do you see that as being problematic in the next—

Dr Levy: We will still have a quorum for meetings at the moment, but if we had to put out a public report we would not have a quorum, but there is no indication that we will be doing that this side of Christmas.

CHAIR: Thank you.

Dr Levy: I will communicate with him again and ask him to bring it to the Attorney-General's attention.

CHAIR: So will we. Just for your knowledge, we have written previously to the Attorney-General with those concerns about the lack of quorum in terms of public reports and the need to fill those positions as a matter of urgency. In matters arising from the previous public meeting on 23 August, you provided some information. However, regarding the capturing of complaint data you offered to provide us an update orally. This is page 5 of your report.

Dr Levy: Ms Florian will.

CHAIR: Ms Florian, thank you.

Ms Florian: Thank you for your question. The member for Coomera at the last meeting raised a question about why, in relation to ethnicity, we recorded only data in relation to Indigenous persons. I can indicate that since the last meeting we have put in place some measures in order to be able to record ethnicity data against some other communities in the hope that that sort of information will give us a better insight into policing relationships with certain communities.

CHAIR: Thank you. Did you want to add anything?

Dr Levy: No.

CHAIR: You also spoke about a temporary project manager within of the office of the commission.

Dr Levy: Yes.

CHAIR: Has there been any progress on the appointment?

Dr Levy: Yes, indeed, there has. That appointment was made, I think, about six weeks ago and had done an initial analysis. This is about the Fitzgerald inquiry repository documents. Apart from the initial analysis, there have now been some discussions with the State Archives. I believe last week the office spent about three days out there. I understand that there are some matters there looking to try to make sure that only safe documents would be released. I believe they have a process that they are agreeing on very shortly, as I understand it. Ms Mendelle might have something further, perhaps. Anything else?

Ms Mendelle: Only that we are at the stage now where we are scoping the whole project. As Dr Levy mentioned, we are developing a robust approach to how we are going to conduct the further audit. We are in negotiations with Queensland State Archives as to the methodology that we will adopt that will be cost effective.

CHAIR: Thank you. Also on page 15 you give us a summary of complaints received. Can I just raise a matter. In the data that you have given us, you have said that there were 645 complaints in the reporting period; 508 were referred to the appropriate agency to deal with; six, or one per cent were retained for investigation by the CMC; and 131, or 20 per cent, were assessed as requiring no further action. In the time that I have been on the committee—this time and previously—one of the most consistent concerns that I heard and as a committee we have heard is about the devolution principle, devolving back to the agency about whom the complaint is made. As a new set of eyes for the CMC, do you have any comment about how you can restore confidence in complainants when they complain to the CMC but their complaint is devolved back to the agency about which the complaint has been made?

Dr Levy: Madam Chair, there are some complaints that are very difficult to resolve adequately for some complainants. There are a couple of those more recently that have not actually come in—I have met with them with another officer of the commission. Commissioner Fox, in fact, personally reviewed a serious matter where there was alleged police corruption. It was only yesterday that we met with that person.

The numbers of matters, though, generally speaking, sometimes over the last five months when I look at the time line of these things, there is a long tail in some of them. But part of that, I think, is that most matters that could be devolved back to departments certainly go back and most of those I think are adequate to go back. When we come to trying to finalise the Callinan and Aroney recommendations, which, by and large, we have worked through—that legislation now will not go through until next year; it is a casualty, again, of the bikie legislation, which touches on everything—but when we get that next year, Callinan has said that we should be focusing on a definition of ‘corruption’, which is going to raise the bar. So, in fact, more matters actually would be dealt with by departments.

One of the things, though, I have been proposing—I have met with the director-general of Justice, the Public Service Commissioner and Mr Keelty a couple of times recently and I have also said this to the implementation panel—is that I think it would be useful if I, or the commission, issued a section 40 direction to departments, which essentially means that we direct them to look after matters of a particular sort. So when we work out what is within corruption and what is not—in the other words the way it is going to be after March or April next year—I propose that we issue this section 40 direction. We have a draft of it done already. But one needs to consult, though, with the chief executives and explain to them what is the impact of this. That at least will give a trial period, say, from Christmas this year roughly until about March, or April, or thereabouts next year for departments to trial it and we can look systemically at how this thing works or how it does not work.

I think there is really no real other answer to the fact that more matters have to be devolved, but they have to be competent to deal with them. There is one caveat, though, about that and that is police. What I have observed is that matters that one would expect would go back to police and be dealt with adequately still there are occasionally a difference of view—there are always differences of views—but particularly with police there is a difference of view about how adequate they have dealt with the matter we have sent back, although we do review those and a number of matters then get appealed to QCAT. So I would have to say that I think we still have to do some more work on the police misconduct matters. In relation to Mr Kaye’s point earlier, I think there are some observations that we could and should make to the Police Commissioner, not about legislative

change but about change to practices. There is in Integrity Services some detailed information that perhaps some police are probably under significant pressure for long periods of time, particularly those who work in malls at night down the Valley and so forth. I am familiar with the model of training and operation that the Army have. I do not think that the police have the same thing. I think sometimes people stay in these jobs doing the night shift for two or three years—that is my observation, anyway. But that is something that we have to tease out further.

CHAIR: Thank you. The time for this hearing is well and truly expired. You have given an undertaking to provide information on your statutory functions in relation to a question from the Leader of the Opposition and we look forward to receiving that. I thank Mr Nase, in particular, for your contribution not only to the CMC but to our meetings—we appreciate that greatly—and also to the hearing that we had earlier this year. We value very much your input. I thank all of the commissioners and the staff, the assistant commissioners and staff of the CMC. I declare the hearing closed. Thank you Hansard for your assistance. We will reconvene at 25 to 11 in the Dandiir Room.

Committee adjourned at 10.23 am