



ETHICS COMMITTEE

REPORT NO. 159

INQUIRY INTO MATTERS RELATING TO THE EVIDENCE OF THE FORMER ACTING CHAIRPERSON OF THE CRIME AND CORRUPTION COMMISSION, DR KEN LEVY, TO THE FORMER PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Introduction and background

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA). The current committee was appointed by resolution of the Legislative Assembly on 27 March 2015.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.¹ The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. This report concerns an allegation that the former Acting Chairperson of the Crime and Corruption Commission (CCC), Dr Ken Levy misled the former Parliamentary Crime and Misconduct Committee (PCMC) about his contact with the former Government prior to the publication of an article in the Courier Mail on 31 October 2013. The article included quotes from Dr Levy in support of the former Government's criminal motorcycle gang legislation.

The referral

4. On 27 March 2015, the Legislative Assembly passed the following motion:

That this House:

1. *Notes that the Select Committee on Ethics was established by a resolution of the Legislative Assembly on 21 November 2013 to investigate and report on matters relating to evidence of Dr Ken Levy, the acting Chairperson of the Crime and Misconduct Commission, to the Parliamentary Crime and Misconduct Committee;*

¹ *Parliament of Queensland Act 2001*, section 104B.

2. *Notes that the Select Committee on Ethics lapsed upon the dissolution of the 54th Parliament;*
3. *Refers to the Ethics Committee the responsibility of investigating and reporting on matters relating to Dr Ken Levy's evidence to the Parliamentary Crime and Misconduct Committee, formerly the responsibility of the Select Committee on Ethics; and*
4. *Authorises the Clerk to transmit all evidence and records of the Select Committee on Ethics to the Ethics Committee.²*

Committee consideration

5. In April 2015, the committee reviewed the evidence and records of the Select Committee on Ethics and resolved to write to the Commissioner of the Queensland Police Service (QPS) to request any material the QPS held from the Police investigation conducted into the alleged offence of the provision of false evidence before Parliament under section 57 of the Criminal Code Act 1899, that may be relevant to the committee's inquiry into the alleged contempt.
6. In June 2015, the QPS provided the committee with a large volume of material, including its investigation report in response to the committee's request.
7. Following further negotiations with the QPS in relation to the provision of additional material in September 2015, the committee initiated an investigation into the alleged contempts by inviting Dr Levy to provide a submission addressing the specific elements of the contempt against the particulars of the allegations.
8. In late September 2015, Dr Levy responded with a letter which, amongst other things, included a request that the matter be finalised as early as practicable and advised of his treatment for a medical condition enclosing a specialist's opinion that he would be unfit to attend to any significant matter until at least the first quarter of 2016.
9. In November 2015, the committee received subsequent advice from Dr Levy's specialist that it was unlikely that Dr Levy would be fit to participate in the committee's inquiry in the foreseeable future.
10. On the basis of the medical specialist's advice the committee decided to proceed to finalise its consideration and to report on these matters.

Definition of contempt

11. Section 37 of the POQA defines the meaning of 'contempt' of the Assembly as follows:
 - (1) *"Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.*
 - (2) *Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—*
 - (a) *the free exercise by the Assembly or a committee of its authority or functions; or*
 - (b) *the free performance by a member of the member's duties as a member.*

² Queensland Legislative Assembly, Record of Proceedings (Hansard), 27 March 2015, p.266.

Nature of the contempt of deliberately misleading a committee

12. The Standing Orders provide that the Legislative Assembly may treat deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) as a contempt.³
13. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading a parliamentary committee:
 - firstly, the statement must, in fact, have been misleading;
 - secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
 - thirdly, in making it, the member must have intended to mislead the House.⁴
14. The Ethics Committee of the 48th Parliament held that the term misleading is wider than 'false' or 'incorrect'. That committee considered it "...possible, although rare and unlikely, that a technically factually correct statement could also be misleading..." by, for example, the deliberate omission of relevant information.⁵
15. The *Code of Ethical Standards: Legislative Assembly of Queensland* emphasises to members that "... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading."⁶
16. Previous ethics committees, and David McGee in *Parliamentary Practice in New Zealand*, have noted that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations. Recklessness, whilst reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.⁷

Matters before the committee

17. The matters before the committee can be broken down into the following five issues that were the basis of the complaint as investigated by the QPS:
 1. Dr Levy's evidence at the PCMC hearing on 1 November 2013 about his contact with the former Government before he sent the material for the article to the Courier Mail;
 2. the content of Dr Levy's letter to the PCMC of 4 November 2013;
 3. Dr Levy's evidence at the PCMC hearing on 13 November 2013 about why he contacted Mr Des Houghton from the Courier Mail;
 4. Dr Levy's evidence at the PCMC hearing on 13 November 2013 about his contact with Mr Lee Anderson (former Director, Government Media Unit); and

³ Standing Order 266(2), Standing Rules and Orders of the Legislative Assembly, available at <http://www.parliament.qld.gov.au/work-of-assembly/procedures>

⁴ McGee, David, *Parliamentary Privilege in New Zealand*, 3rd Edition, Dunmore Publishing Ltd, Wellington, 2005, p.653-655.

⁵ Members' Ethics and Parliamentary Privileges Committee, *Report No. 4 - Alleged Misleading of the House by a Minister on 14 November 1996*, Goprint, Brisbane, 1997, p.10.

⁶ Queensland Legislative Assembly, *Code of Ethical Standards: Legislative Assembly of Queensland*, Goprint, Brisbane, 2004, as amended 30 June 2006, 9 February 2009, 11 May 2009, p.25, available at <http://www.parliament.qld.gov.au/work-of-assembly/procedures>

⁷ McGee, David, *Parliamentary Privilege in New Zealand*, Third Edition, Dunmore Publishing Ltd, Wellington, 2005, p.654.

Members' Ethics and Parliamentary Privileges Committee, *Report No. 27 - Report on a Matter of Privilege - The Alleged Misleading of the House by a Minister on 20 October 1998*, Goprint, Brisbane, 1999, p.2.

5. Dr Levy's evidence at the PCMC hearing on 13 November 2013 about his contact with government officers about media.

Matter 1 - Dr Levy's evidence at the PCMC hearing on 1 November 2013

18. On 1 November 2013, Dr Levy attended public and private hearings of the PCMC, in his capacity as the Acting Chairman of the then CMC. During the PCMC hearing, the following exchange occurred between the former Leader of the Opposition and Dr Levy:

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.

19. it was alleged that Dr Levy's answers to the former Leader of the Opposition's questions about contact with the government prior to the hearing and before Dr Levy sent the article to the Courier Mail were deliberately misleading.
20. On the information before the committee, the following facts were established in relation to Dr Levy's and the CMC's contact with the government prior to the hearing on 1 November 2013 and before Dr Levy sent his article to the Courier Mail:
- the CMC Media Unit received a telephone call from Mr Lee Anderson, former Director, Government Media Unit, on 22 October 2013 about the possibility of the CMC undertaking media activity on the issue of criminal motorcycle gangs (CMGs);
 - Dr Levy called Mr John Sosso, former Director-General, Department of Justice and Attorney-General on 25 October 2013 to seek guidance on the appropriateness of contacting the Attorney-General's media advisor for advice on who would be an appropriate journalist to speak to about an interview on CMGs;
 - Dr Levy called the former Attorney-General's Senior Media Advisor on 25 October 2013 who was absent from work, so Dr Levy spoke to a junior media advisor;
 - Mr Anderson contacted Dr Levy, via text, on 25 October 2013 stating that the Attorney-General's junior media advisor had informed him of Dr Levy's interest in doing media on CMGs;
 - Mr Anderson suggested that Dr Levy contact Mr Des Houghton at the Courier Mail;
 - Dr Levy met with Mr Anderson at the Government's Executive Building on 25 October 2013. There is some dispute about the specifics of the conversation at the meeting, however, it is agreed that Mr Anderson advised Dr Levy that he should contact Mr Houghton at the Courier Mail;
 - Mr Anderson contacted Dr Levy, via text message on 27 October 2013 to inform Dr Levy that he had spoken to Mr Houghton who was keen to meet Dr Levy, to advise Dr Levy of Mr Houghton's interest in corrupt police officers links to CMGs and to suggest a line to take in response to questions on this topic. Dr Levy sent a text message to Mr Anderson to thank him for his "efforts, warning and sage advice";

- on 28 October 2013, Dr Levy contacted Mr Anderson to obtain Mr Houghton's telephone number; and
- Mr Anderson contacted Dr Levy, via text message, on 31 October 2013 (the day Dr Levy's article was published in the Courier Mail) to congratulate Dr Levy on the article.

Element one – were Dr Levy's statements misleading?

21. The first limb of this element is whether Dr Levy's statements contained factually or apparently incorrect material. On the information before it, the committee finds that Dr Levy's answers to the former Leader of the Opposition's questions contain apparently incorrect material given his contact with Mr Anderson, a senior Government media advisor, prior to the publication of the article on 31 October 2013.
22. The second limb of this element is whether the statement itself was misleading. The committee finds that it is arguable that a reasonable person may be misled by Dr Levy's responses to the former Leader of the Opposition's questions into understanding that he had no contact, whatsoever, with the Government prior to the publication of the article.

Element two – did Dr Levy know at the time that the statements were incorrect?

23. On the information currently before the committee, the committee finds that it remains arguable as to whether Dr Levy knew at the time that his statements were incorrect.

Element three – in making the statement, did Dr Levy intend to mislead the Committee?

24. In his submission to the Select Committee on Ethics Dr Levy asserts that he did not intentionally mislead the committee.
25. If the committee were to find on the balance of probabilities that Dr Levy knew at the time that his statements were incorrect then an inference might be drawn of an intention to mislead the committee.
26. However, in the absence of the ability to question Dr Levy with respect to the specific elements of this allegation of contempt, the committee is unable to reach a concluded finding in relation to this matter.

Matter 2 - Content of Dr Levy's letter to the PCMC of 4 November 2013

27. On 4 November 2013, Dr Levy wrote to the former Chair of the PCMC to clarify his statements at the public meeting of the PCMC on 1 November 2013 (**Appendix A**).
28. On the information before the committee, the following facts were established in relation to the genesis of Dr Levy's letter to the PCMC of 4 November 2013:
 - After the hearing of 1 November 2013, the Part-time Commissioners of the CCC and Ms Feenan went to Dr Levy's office and informed him of his "oversight" in relation to Mr Anderson's phone call and their concerns about Dr Levy's evidence to the PCMC;
 - At approx. 3.00pm to 3.30pm that day – Dr Levy called the Chair of the PCMC – Dr Levy informed her of the "media-to-media" contact between Mr Anderson and the CMC Media Unit on 22 October 2013 and that he may have "unintentionally" misled Parliament. Dr Levy agreed to send details in a letter to the PCMC; and
 - On 4 November 2013, Dr Levy sent a letter to the PCMC – Dr Levy's letter refers to "media-to-media" contact. The letter did not disclose Dr Levy's telephone calls, texts and face-to-face meeting with Mr Anderson.

Element one – were Dr Levy's statements in his letter misleading?

29. On the information before the committee, the committee formed the view that Dr Levy's letter to the committee of 4 November 2013 provided apparently incorrect material to the committee to the extent that it was an incomplete clarification of his answer to the question as to whether he had any discussions with anyone from the government regarding the article. His letter omitted to disclose his own personal contact with Mr Lee Anderson of the Government Media Unit via telephone, text message and a face to face meeting.
30. In considering whether the letter itself was misleading the committee was cognisant that, the term 'misleading' is wider than 'false' or 'incorrect' and that previous ethics committees considered it "possible, although rare and unlikely, that a technically factually correct statement could also be misleading"—for example, by the deliberate omission of relevant information.
31. On the information before the committee, the committee finds that it remains arguable that a reasonable person may have been misled by Dr Levy's letter of 4 November 2013 as to the extent of contact between himself and government media officers particularly in that there was no mention in his letter of the multiple points of contact with the Director of the Government Media Unit, Mr Lee Anderson.

Element two – did Dr Levy know at the time that the statements were incorrect?

32. The committee found a clear inference that Dr Levy should have been aware, at the time of composing his letter to the committee, that he had telephone, text message and face to face contact with Mr Anderson.
33. Accordingly, the committee were of the view that Dr Levy should have known at the time of his letter that it was an incomplete clarification of his response to the question as to whether he had any discussions with anyone from the government regarding the article and therefore it remains arguable as to whether Dr Levy knew at the time that his letter was misleading by omission.

Element three – in making the statement, did Dr Levy intend to mislead the Committee?

34. In his submission to the Select Committee on Ethics Dr Levy asserts that he did not intentionally mislead the committee.
35. If the committee were to find on the balance of probabilities, that Dr Levy knew at the time that the statements in his letter of 4 November 2013 were, by omission, misleading then an inference might be drawn of an intention to mislead the committee.
36. However, in the absence of the ability to question Dr Levy with respect to the specific elements of this allegation of contempt, the committee is unable to reach a concluded finding in relation to this matter.

Matter 3 - Dr Levy's evidence at the PCMC hearing on 13 November 2013 about why he contacted Mr Des Houghton from the Courier Mail

37. On 13 November 2013, Dr Levy attended another hearing of the PCMC. During the PCMC hearing, the following exchange occurred between Ms Trad MP and Dr Levy:

CHAIR: I just remind members that we are here really to discuss the potential misleading of the committee.

Ms TRAD: Yes, I understand. Thank you, Madam Chair. Dr Levy, I am interested as to why you sought out Des Houghton in relation to constructing your opinion piece.

Dr Levy: Well, Des Houghton—if one googles 'criminal motorcycle gangs' and 'the Courier-Mail', right back to 2007 the only name that comes up is Des Houghton.

Subsequently there was a further exchange:

Ms TRAD: Yes, but, Dr Levy, Des Houghton had not written one single article about the bikies in Queensland in relation to the current situation. There were other journalists at the *Courier-Mail* who had been running on this story. I am interested as to why you did not approach them.

Dr Levy: I do not think I have the copies here, but in 2007 there were probably three or four, at least, articles—

Ms TRAD: Yes, but in 2013, Dr Levy, Des Houghton's first article about the bikies was on 30 October. I am just interested why, if you wanted to have an article written up, you went to a subeditor who had not written about the bikies yet as opposed to the journalists who had been covering this issue for some time.

Dr Levy: As I said, I virtually had no contact with journalists at all, so I did not really have a history about knowing—

Ms TRAD: So was it a recommendation?

Dr Levy: Sorry?

Ms TRAD: Was it a recommendation that you contact Des Houghton?

Dr Levy: I had spoken to some media people.

Ms TRAD: Within the CMC or broader?

Dr Levy: Some of them would have been broader.

Ms TRAD: Who were they, Dr Levy?

Dr Levy: I cannot recall who exactly now.

Ms TRAD: You cannot recall?

Dr Levy: Certainly within government I would have run it past probably Justice and probably Lee Anderson as well.

CHAIR: You mean when you worked in government?

Dr Levy: Sorry?

CHAIR: When you were working in government you would have?

Dr Levy: No, no, no. Just recently. Dominic was away that week.

Ms TRAD: So you had a conversation with Lee Anderson about who to talk to in the media about your article?

Dr Levy: No. I just said I wanted somebody who would be reliable and print the article that I wanted printed and, given he had written on motorcycle gangs before, would he be reliable? That was the only question.

CHAIR: Who did you ask?

Dr Levy: Lee Anderson and also—I think I tried to put a question to somebody amongst the Attorney's media people, given Dominic was away, but he was not available.

CHAIR: When did this happen?

Dr Levy: About the day before I spoke to Des Houghton.

Ms TRAD: So on 29 October? Is that what you are saying?

Dr Levy: 28th, 29th—something like that, yes.

Ms TRAD: 28th, 29th. So you had a conversation with Lee Anderson. Did you initiate that conversation?

Dr Levy: Yes.

Ms TRAD: You initiated that conversation?

Dr Levy: Yes.

38. On the information before the committee, the following facts were established relevant to contact with Mr Houghton in relation to the article:

- At 10.21am on Friday 25 October 2013, Mr Anderson texted Dr Levy – Dr Levy submits that Mr Anderson stated that Ms Hornbuckle (Attorney's media advisor) had informed him of Dr Levy's interest in doing a press interview on CMGs and suggested he contact Mr Des Houghton at the Courier Mail; and

- Between 3.00pm and 3.30pm on Friday 25 October 2013 -- Dr Levy met with Mr Anderson in a conference room in the Executive Building on George Street. There is some dispute about what was said, however, it is agreed that Mr Anderson advised Dr Levy that he should contact Mr Houghton at the Courier Mail.

Element one – were Dr Levy's statements misleading?

39. On the information before the committee, the committee finds that a key aspect to Dr Levy's rationale for seeking out Mr Houghton in relation to the article was a recommendation to that effect from Mr Anderson.
40. On the information before it, the committee found that it remains arguable that Dr Levy's response to Ms Trad's initial question was apparently incorrect in that it omitted to include the relevant information of the referral from Mr Anderson.
41. The committee also found, that it remained arguable that a reasonable person may have been misled by Dr Levy's response to Ms Trad's question as to why he sought out Des Houghton as there was no mention of the referral by Mr Anderson which appeared to be a key reason for the contact with Mr Houghton.

Element two – did Dr Levy know at the time that the statements were incorrect?

42. On the information before the committee, there is a clear inference that Dr Levy should have been aware at the time of answering Ms Trad's initial question that Mr Anderson had referred Mr Houghton to him. His answers to the subsequent direct questioning from Ms Trad on this issue confirm that knowledge.
43. During his police interview Dr Levy conceded "*I guess with the benefit of hindsight, I probably could have had a more fulsome answer but that was a partial answer*".
44. Accordingly, the committee finds it remains arguable as to whether Dr Levy was aware at the time that his response to Ms Trad's initial question was incorrect and misleading by omission.

Element three – in making the statement, did Dr Levy intend to mislead the Committee?

45. in his submission to the Select Committee on Ethics Dr Levy asserts that he did not intentionally mislead the committee.
46. if the committee were to find on the balance of probabilities, that Dr Levy knew at the time that his response to Ms Trad's initial question as to why he sought out Des Houghton was, by omission, misleading, then an inference might be drawn of an intention to mislead the committee.
47. However, in the absence of the ability to question Dr Levy with respect to the specific elements of this allegation of contempt, the committee is unable to reach a concluded finding in relation to this matter.

Matter 4 - Dr Levy's evidence at the PCMC hearing on 13 November 2013 about his contact with Mr Lee Anderson (former Director, Government Media Unit)

48. At the PCMC hearing on 13 November 2013, there was a further exchange between Ms Trad MP and Dr Levy as follows:

Ms TRAD: I am sorry, Dr Levy. In your letter to the committee you do not make reference to the fact that you have had subsequent conversations with Lee Anderson in relation to the best journalist to pursue in relation to getting your story out.

Dr Levy: No, this was a judgement call I had to make. If I wanted to get it out there, I wanted somebody who was going to publish the article that I wanted, or the story, and not be selectively taking things, like usually happens.

Ms TRAD: Dr Levy, I put it to you that your admission just now indicates that you are withholding more information from this committee. I put it to you, Dr Levy, that your admission that you have had subsequent conversations with the Premier's senior media adviser and withheld that information from this committee is in fact an offence.

Dr Levy: I am sorry, I do not think that was relevant at all.

Ms TRAD: It is absolutely relevant, Dr Levy.

Dr Levy: Well, that conversation was about who would be reliable. There was nothing about the article; he did not see the article—absolutely nothing.

Ms TRAD: I am sorry, Dr Levy. You are asking us to trust your recollection of that conversation when you could not recall the original approach by government? I am sorry, Dr Levy, but I find that what you are revealing is quite a frequent association with the government's chief media officer and I think it is a very big problem in terms of the independence of the CMC.

Dr Levy: Look, that is the only contact I had and only for that purpose.

49. On the information before the committee, the following facts have been established in relation to contact between Mr Anderson and Dr Levy:

- At 10.21am on Friday 25 October 2013, Mr Anderson texted Dr Levy – Dr Levy submits that Mr Anderson stated that he had been informed of Dr Levy's interest in doing a press interview on CMGs and suggested he contact Mr Des Houghton at the Courier Mail;
- Between 3.00pm and 3.30pm on Friday 25 October 2013 – Dr Levy met with Mr Anderson in a conference room in the Executive Building on George Street. There is some dispute about what was said, however, it is agreed that Mr Anderson advised Dr Levy that he should contact Mr Houghton at the Courier Mail;
- On Sunday 27 October 2013, at 1.41pm – Mr Anderson texted Dr Levy – Dr Levy submits that Mr Anderson: said he had spoken to Mr Houghton who was very keen to have a chat with Dr Levy; advised of Mr Houghton's interested in corrupt police officers links to CMGs and suggested a line to take in response to any questions on the matter; and said he would provide Mr Houghton's number and leave it to Dr Levy to organise a meeting; and
- At 1.48pm on the same day – Dr Levy texts Mr Anderson – Dr Levy submits that he thanked Mr Anderson for his "efforts, warning and sage advice". Dr Levy stated that he would contact Mr Houghton in the morning.

Element one – were Dr Levy's statement misleading?

50. On the information before the committee, the committee took the view that it remains arguable as to whether Dr Levy's response "Look that is the only contact that I had and only for the purpose" was factually incorrect.
51. The committee noted the comment in the QPS Investigation Report that a feature of the above exchange with Ms Trad makes a number of statements without expressly asking Dr Levy a question. This has the effect of casting some ambiguity around exactly which statement Dr Levy's response "Look that is the only contact that I had and only for that purpose" was intended to address.
52. The committee finds that it remains arguable as to whether a reasonable person may have been misled by Dr Levy's response "Look that is the only contact that I had and only for that purpose" as indicating a single instance of contact with Mr Anderson.

Element two – did Dr Levy know at the time that the statements was incorrect?

53. The committee finds a clear inference that Dr Levy should have been aware at the time of the above exchange between him and Ms Trad MP on 13 November 2013 that he had multiple points of contact with Mr Anderson.

54. Accordingly, the committee finds it remains arguable that Dr Levy was aware that his response was incorrect and misleading.

Element three – in making the statement, did Dr Levy intend to mislead the Committee?

55. in his submission to the Select Committee on Ethics Dr Levy asserts that he did not intentionally mislead the committee.
56. If the committee were to find on the balance of probabilities that Dr Levy knew at the time that his statement to the committee was misleading then an inference might be drawn of an intention to mislead the committee.
57. However, in the absence of the ability to question Dr Levy with respect to the specific elements of this allegation of contempt, the committee is unable to reach a concluded finding in relation to this matter.

Matter 5 - Dr Levy's evidence at the PCMC hearing on 13 November 2013 about his contact with government officers about media.

58. At the PCMC hearing on 13 November 2013, there was a further exchange between Ms Trad MP and Dr Levy as follows:

Ms TRAD: Can you quantify how many times you have been in contact with or have had government officers contact you in relation to media?

Dr Levy: I think I have had none from the Attorney-General. You might recall I said that I arranged for the Premier and the Attorney-General to come for a presentation—a briefing—at the CMC. You might recall that. On that occasion Lee Anderson made contact with me saying that the Premier would come down and he would be accompanied by various people. He then spoke to Dominic about the rest of the arrangements for that day. That is the only other occasion. He is the only other name I knew.

Element one – was Dr Levy's statements misleading?

59. The first limb of this element is whether the person's statement contained factually or apparently incorrect material. As identified in the QPS Investigation Report, the committee notes Dr Levy's answer to the above question needs to be considered in the context that only a few minutes earlier Dr Levy had disclosed contact with the Attorney-General's media unit.
60. Consequently, the question could be objectively considered to be asking for more details about contact with media officers in connection with the article or alternatively, the question could objectively be interpreted as asking for details about contact with media officers in connection with any other issue or occasion.
61. The committee is of the view that Dr Levy's response would tend to indicate that he applied the later interpretation; and therefore there is no evidence to indicate that Dr Levy's statement that "That is the only other occasion. He is the only other name I knew." was factually or apparently incorrect.
62. In the absence of any evidence to support the first element the committee did not proceed to consider the other elements in relation to this matter.

Conclusions

63. On the information before it the committee finds that:
- (a) in relation to matters 1 to 4, it remains arguable as to whether Dr Levy's statements to the former PCMC contained factually incorrect material and were misleading and as to whether Dr Levy knew, at the time of making the statements, that the statements were incorrect and misleading;

- (b) in the absence of the ability to question Dr Levy in relation to matters 1 to 4 there is insufficient evidence before the committee to reach a definitive view in relation these matters; and
- (c) there was no evidence before the committee to support the first element in relation to matter 5 and therefore the committee did not proceed to consider the other elements.

64. Accordingly, the committee was unable to make a finding of breach of privilege or contempt in relation to any of the five matters.

Conclusion 1

On the information before it the committee finds that:

- (a) in relation to matters 1 to 4, it remains arguable as to whether Dr Levy's statements to the former PCMC contained factually incorrect material and were misleading and as to whether Dr Levy knew, at the time of making the statements, that the statements were incorrect and misleading;
- (b) in the absence of the ability to question Dr Levy in relation to matters 1 to 4 there is insufficient evidence before the committee to reach a definitive view in relation these matters; and
- (c) there was no evidence before the committee to support the first element in relation to matter 5 and therefore the committee did not proceed to consider the other elements.

Recommendation

The committee recommends that the House take no further action in relation to these matters.



Mark Ryan MP
Chair

November 2015

Membership — 55th Parliament

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Member for Morayfield

Mr Glen Elmes MP, Deputy Chair
Member for Noosa

Ms Nikki Boyd MP
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IN-CONFIDENCE

4 November 2013

APPENDIX A

Mrs Liz Cunningham MP
Chair
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mrs Cunningham

RE: CMC/PCMC PUBLIC HEARING

I refer to my telephone call to you at about 2.30pm last Friday, 2 November 2013. I confirm that the Part time Commissioners brought to my attention just prior to that time that they had been advised one of my answers to the PCMC public hearing last Friday morning had been inaccurate. The answer in issue relates to the question by the Leader of the Opposition about whether I had had any contact from the Government prior to my writing the opinion piece which was published in the Courier Mail on 31 October 2013.

The information provided to the Commissioners was that the CMC Media Unit had received a phone call from Mr Lee Anderson from the Government Media Unit on the afternoon of Tuesday 22 October 2013 to ask if the CMC was going to do any media interviews on the crime work of the CMC or the 'bikie' legislation.

I asked the Commissioners what information they referred to as I did not recall it. I was then told by Commissioner Phillip Nase that the CMC's senior media adviser had come to my office and told me of the phone call. I suddenly remembered him coming to me about such a call but, despite then recalling the brief conversation, I thought I had been a little dismissive of the suggestion. They seemed to confirm my response was of that nature.

As I said to you when I called on Friday afternoon, I did not honestly have any recollection of the conversation at the time of answering the question. The question was "whether anyone from Government" had contacted me before I wrote the article. The question from the Leader of the Opposition, in the words and tone used, conjured up in my mind any direct political contact with me personally, and I took that as a direct reference to the Premier or the Attorney General. I certainly have never had any pressure from the Premier or the Attorney General, or anyone else from Government for that matter, trying to pressure me about any issue. Consequently, at the time of answering the question, my recollection was that I had not had any contact with

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anyone which could have influenced my decision to write the article I did, either the content of it or in the timing of the article.

I have now had an opportunity to ask the CMC's senior media adviser, about the detail of the contact from the Government Media Unit. His account is informative and he clearly keeps an effective system as the information outlined below reveals.

The Senior Media Adviser has given me a verbal account and also provided me with some dot points of his recollection and understanding of the matter. He says that at 4.37pm on Tuesday 22 October last, Mr Lee Anderson of the Government Media Unit rang the CMC media unit. He spoke with the junior media officer and said he had a thought to pass on to me about whether the CMC was considering doing any media on the bikie issue. The media officer advised Mr Anderson she would have the Senior Media Adviser call back. The following sequence then followed:

- ◆ Sometime after 4.37pm, both CMC media staff attempted to meet with me but I was unavailable as I was in another meeting.
- ◆ The CMC media staff then briefed other key CMC management on the call from Mr Anderson.
- ◆ Sometime after this briefing on the Tuesday afternoon, the media officers came to meet with me in my office. The Acting Assistant Commissioner Crime, Mr Michael Scott, joined us later in the meeting.
- ◆ They advised me of the call from Mr Anderson.
- ◆ The senior media adviser advised me during this meeting that the CMC had already received several requests for interviews and as such the CMC was already considering if it was appropriate to conduct any interviews. In this meeting, it was common ground that the CMC could only do media on the broader crime portfolio, the hearings process and any new powers such as the closed coercive hearings for intelligence in a general sense as the CMC could not mention specifics as it may prejudice future hearings or court proceedings.
- ◆ I was reminded that I had said words to the effect that "we would not be spooked" by the phone call from Mr Anderson as we were already discussing internally the prospect of doing broader media on this issue.
- ◆ A decision was made by me and the media staff that the senior media adviser would call Mr Anderson the following morning (Wed 23/10/13) to inform him that the CMC was already considering what media might be possible without impacting on CMC operations. The senior media adviser was to make this call before he flew to Newcastle on Wednesday morning on private business.
- ◆ The senior media adviser did call Mr Anderson from the Government Media Unit on Wednesday morning and outlined the restrictions on the CMC due to operational matters and explained how the CMC had already considered its position on this issue because it had previously received several media interview requests and how it might undertake media in the future, but only in a generic sense so the CMC does not prejudice any operational matters.
- ◆ I am advised by the senior media adviser Mr Anderson understood the CMC's position and the CMC Media Unit had no further contact with him.

My discussions with the media adviser at that time and subsequently, shows the CMC was already actively considering doing some general media on the broader issue of crime and the new hearing powers before the call from Mr Anderson.

What followed was then mostly of my own actions as, unfortunately, the media adviser was then out of town until the afternoon (31 October 2013) before the PCMC Hearings as [REDACTED]

[REDACTED]. Due to his absence, I had discussed with the media officer and Acting Assistant Commissioner Crime Mr Michael Scott to determine which one of us should do the media on the broader impacts of the legislation on the CMC and how the CMC contributes to the broader law enforcement response.

Mr Scott was willing to do the media but as the press seemed unbalanced on the new laws relating to the Criminal Motor Cycle Gangs (CMGs), I said I wished to do the first tranche. This was because I was concerned with the media portrayal of the new laws as being a contest between lawyers and judges versus politicians, and that this excluded the other part of the criminal justice system relevant to CMGs, that is, the "rest of society" or the community. I regarded this as being an idiosyncratic perspective only and ignored the community. As a law professor, I regularly taught on this area of the criminal law and the content of my article was based heavily on my content knowledge of the criminal justice system.

In the subsequent 2 or 3 days, the media became more intense. There were a couple of other discussions in that couple of days between the junior media officer and/or Mr Scott and myself and there was a suggestion that Mr Scott might perhaps best deal with that. I then decided to start preparing notes for a media interview on about Friday 26 October 2013 about which I thought it was important to include in a media release. It ultimately became a list of issues and paragraphs to describe the story I wished to be printed. That was completed over the weekend 26-27 October, as the days were always busy. That I did, and then contacted a journalist on Monday 28 October to suggest I had something to add to the debate. I was invited to have an interview with the journalist that afternoon. I was surprised that I was quoted the next day in the Courier Mail, but mainly about whether police were linked to CMGs on the Gold Coast. The main story which I thought was important was not printed. As the journalist did not seem to take many notes, I emailed him the written notes I had made, to the email address I found by google search. I called him the next day to check that he had received it, which he confirmed. The following day, the written work which I had emailed appeared as an exclusive on the front page under my name.

I sincerely regret that this error in my answer has occurred. It is of significant embarrassment to me that I did not recollect the matter. It was a short conversation and as I had dismissed the suggestion, I had obviously dismissed it from my consciousness and the fact that my concept of the Leader of the Opposition's question was contact from the Premier or Attorney General, it certainly did not enliven my mind to the brief matter which was raised with me late one afternoon by the Commission's media unit staff and which was no longer in my consciousness. I did not recall it again until the detail of it was raised with me last Friday afternoon. Until that time, I did not associate my article until mention to me of an approach which had been made to the media adviser of the Commission.

In the embarrassment on Friday afternoon, I indicated to you that perhaps I should consider standing down (particularly in light of the call by the Leader of the Opposition that morning for me to do so because of the media article). However, on reviewing the facts provided by the media adviser, I note that the call from the Government Media Unit referred to the broad area of crime in the CMC and its hearings powers to deal with CMGs. My article was not about that topic - my opinion piece was motivated by and dealt with, the imbalance in the media reports about the criminal justice system and the implication that citizens should in some way be compelled to believe that only the lawyers can have the correct solution on this matter. Distracting the public from that by politically motivated and emotive issues treats the public unfairly.

My article was not politically motivated. It was a statement of fact about CMGs and about the role of the Criminal Justice System. I strongly support the Courts independent discretion as to conduct of trials and sentencing. But it is the Government's role to legislate. As I said in my opinion piece in the Courier Mail, one of the main issues is to keep in mind that CMGs are a serious threat. As I said to the Committee last Friday, CMGs are really criminal cartels. The Government was being responsible in

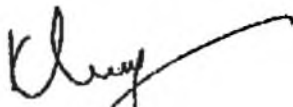
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legislating. The CMC has a direct interest in that. I, as Acting Chairperson, regarded that I had relevant and important information about that issue which was obviously a strongly divided one.

While I regret the omission I made and apologise for it, I think the above explanation shows sequentially what occurred and that the CMC was already planning its own media to do with CMC hearing powers for dealing with criminal motor cycle gangs. In any event, I was not captured by the phone call from the Government media Unit and nor did I deal with the topic of interest suggested by the Government Media Unit. I look forward to hearing of your consideration of this report and explanation.

Yours sincerely



Dr Ken Levy RFD
Acting Chairperson

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