

Introduction

Thank you for the opportunity to comment on the Bill. It is noted the Bar Association of Queensland ('BAQ') has made a submission giving detailed consideration to the provisions of the Bill. I agree with that submission and that made by Mr Tony Fitzgerald QC.

This submission will give detailed consideration to only one part of the Bill, that which deals with what is described in the BAQ submission as the 'Dr Levy clause'.

The explanatory notes for the Bill provide¹ that implementation of the accepted recommendations of the Callinan/Aaroney review will, inter alia, 'lead to an improvement in public confidence in the CMC'.

It is submitted that the actions of the Premier in dismissing the entire membership of the PCMC, in an apparent effort to avoid further investigation of Dr Levy, and the referral of that investigation to the a Select Committee on Ethics which has resisted all attempts to give even the appearance of transparency, have significantly eroded public confidence in the CMC.

In my submission the Dr Levy clause would achieve precisely the opposite of the professed policy objective. This is in the circumstances where Dr Levy's continued appointment constitutes a serious threat to public confidence in the CMC.

The provision of a legislative imprimatur guaranteeing that appointment, while Dr Levy remains under investigation by another Committee, is another serious blow to what confidence remains.

The Appointment of Dr Levy

Dr Levy was initially appointed Acting Chairperson on 16 May 2013 and re-appointed for a second term on 8 November 2013. That term is currently set to expire on 22 May 2014.

The Bill contains transitional provisions which seek to legislatively guarantee the appointment of Dr Levy until 31 October 2014.²

The Factual Scenario

Dr Levy authored an article which appeared in the *Courier Mail* on 31 October 2013. The article supported the anti-association legislation introduced by the Government. In it, Dr Levy said, 'the Attorney-General and the Premier – with support of the Queensland Government – are taking the strong action that is required'.

¹ Explanatory Notes at page 1

² Section 402(2)(b)

PCMC Hearing – 1 November 2013

On 1 November 2013, Dr Levy appeared before the PCMC. The Opposition Leader, Ms Palaszczuk, asked Dr Levy if he had any discussions with 'anyone from the government' before he submitted the article to the *Courier Mail*. Dr Levy denied that suggestion.

The following exchange took place ('the exchange'):-³

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 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*, did you have any discussions with anyone from government?

Dr Levy: No.

At the very beginning of the hearing on 1 November 2013, Dr Levy made an opening statement, seeking to, 'assure the Committee he had not lost his independence'. He dealt with the article and the public comment it had attracted at length.⁴

First Attempt to Correct the Record

On 2 November 2013, Dr Levy called the chair of the PCMC and said he may have made an error in relation to the exchange.⁵ The content of the correction was confirmed in a letter Dr Levy sent to the PCMC, which stated that Mr Lee Anderson, head of the Premier's media unit, had contacted the CMC media unit, on 22 October 2013, prior to the article being submitted to the *Courier Mail*.⁶

Dr Levy says in the letter, of his failure to recollect being told of the contact between the media units,

'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

³ PCMC public hearing 1 November 2013 transcript at page 5

⁴ PCMC public hearing 1 November 2013 transcript at pp 1-3

⁵ PCMC public hearing 13 November 2013 transcript at page 2

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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.⁷

Critically, there was no disclosure of any other contact which may have been relevant to Dr Levy's responses in the exchange, either in the telephone conversation or letter to the Chair of the PCMC.

PCMC Hearing – 13 November 2013

On 13 November 2013, Dr Levy again appeared before the PCMC. On that occasion, Dr Levy said, when the error was first brought to his attention, he still did not recall the contact with Mr Anderson. He then added that once he recalled the approach to the CMC media people, he felt guilty and 'highly embarrassed' about it and thought about clearing out his drawers and leaving.⁸

Dr Levy said Mr Phillip Nase and Mr George Fox had raised questions with him at or around the time of his becoming aware of his error, particularly around whether Dr Levy should be re-appointed.⁹ Another issue was raised, but the transcript relating to this has been redacted.¹⁰

Dr Levy said he had a conversation with the CMC media staff about the contact from Mr Anderson, some 9 days prior to his being asked the question by the Opposition Leader.¹¹ He agreed that Mr Anderson's contacting the CMC was a 'unique event' and could not recall a precedent.¹² He agreed that the usual protocol would be for Mr Anderson to make an approach to the Attorney-General's department, which oversees the CMC.

Dr Levy categorically denied that the Premier or anyone from his office asked him to write an article. He said, 'if one asks 'Did the Premier or anybody from his office ask me to write an article?' The answer is, no.'¹³

Dr Levy similarly denied that anybody else had made any contribution to the article, tried to tell him what to write, or to influence him in any way to write the article.¹⁴

When asked why he decided to approach a particular journalist, Mr Des Houghton from the *Courier Mail*, Dr Levy initially said he had 'googled' Mr Houghton and seen he had written about criminal motorcycle gangs.¹⁵

Upon further questioning, Dr Levy revealed he had sought a recommendation from Mr Anderson about which journalist he should approach, or 28 or 29 October 2013.¹⁶ He said he had initiated that conversation with Mr Anderson.¹⁷

⁷ at page 3

⁸ PCMC public hearing 13 November 2013 transcript at page 4

⁹ *ibid* at page 12

¹⁰ *ibid*

¹¹ *ibid* at page 5

¹² *ibid*

¹³ PCMC public hearing 13 November 2013 transcript at page 8

¹⁴ *ibid*

¹⁵ *ibid* at page 14

Dr Levy continued to deny that he and Mr Anderson had ever discussed the content of the article, saying, 'Well that conversation was about who would be reliable. There was nothing about the article – he did not see the article'.¹⁸

Dr Levy said Mr Anderson had not asked him what the article was about, nor had Dr Levy told Mr Anderson what the article was about.¹⁹ When it was put to him, again, whether Dr Levy had discussed the contents of the article with Mr Anderson, Dr Levy said, 'Definitely not, I mean, it was a phone call. He did not see it. I did not sent it to him'.²⁰

Dr Levy said the telephone call to ask Mr Anderson about Mr Houghton was the only other contact he had with Mr Anderson and for only that purpose.²¹

When asked why he had not sought a recommendation from Ms Siobhan Barry, from the CMC media office, Dr Levy said hat Ms Barry had responded by saying, 'Look, I don't think you should do any media about this'.²²

Dr Levy admitted he had not been critical of the government during his time as Acting Head of the CMC and raised the concern that there was a risk the government would 'get rid of the CMC' if he did so.²³

PCMC – hearing 18 November 2013

On 18 November 2013, two days before the PCMC was sacked en-masse, it heard evidence from Mr Anderson, the head of the Premier's media unit. Mr Anderson was represented before the PCMC by Mr Peter Dunning SC.

Mr Anderson told the PCMC that the Premier and Attorney-General wanted the CMC to make comments in the media to reinforce the message that bikies were a serious menace to society.²⁴ He confirmed making the call to the CMC media office and then having his call returned by the senior media officer from the CMC later that same day, the 22nd of October 2013.²⁵

Mr Anderson said he received an initial response that the CMC was not keen to do any media.²⁶ At some later time, and for reasons unknown by Mr Anderson, Dr. Levy then contacted the Attorney-General's office, and told someone there he had changed his mind and wanted advice about 'the best way to progress that'.²⁷ This was then passed along to Mr Anderson by the DJAG.²⁸

¹⁶ *ibid* at page 15

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ *ibid* at page 18

²⁰ *ibid*

²¹ *ibid*

²² *ibid* at page 16

²³ *ibid*

²⁴ PCMC public hearing 18 November 2013 transcript at page 3

²⁵ *ibid*

²⁶ *ibid* at page 4

²⁷ *ibid*

²⁸ *ibid*

Mr Anderson then contacted Dr Levy by telephone at least twice.²⁹ Mr Anderson said he selected Des Houghton for Dr Levy to speak to and had made initial contact with Mr Houghton.³⁰

Mr Anderson agreed with the proposition that he had a discussion with Dr Levy outlining the sort of matters he thought it was appropriate to have in the article but also to reinforce that Dr Levy did not need to discuss sensitive matters or operational matters of the CMC.³¹ He said the sort of story he envisaged was a feature story on Des Houghton's page in the Saturday paper.³²

Mr Anderson said after those two telephone calls, and before Dr Levy was interviewed by Des Houghton, Dr Levy called Mr Anderson and asked if the two of them could have a face-to-face meeting.³³ Dr Levy said he was in the area and could come up to Mr Anderson's office, on the 15th floor of the executive building, where the Premier's office is located.³⁴ This meeting was said to have taken place just a few days before the article appeared.³⁵

During that meeting, Mr Anderson suggested to Dr Levy that the article should be a feature about the threat posed by criminal motorcycle gangs and, particularly, the links between those gangs and the drug trade.³⁶ He warned Dr Levy about a line of questioning Des Houghton might wish to pursue about links between police and criminal motorcycle gangs and advised that Dr Levy should refuse to answer such questions on the basis they were operational matters.³⁷

Mr Anderson agreed with the proposition that in the face-to-face meeting he, 'did a bit of prepping in terms of questions and where not to go'.³⁸ Mr Anderson said the 'strong focus' and what he had wanted Dr Levy to talk about, was the 'activities of criminal motorcycle gangs and their links to the illegal drug trade'.³⁹

Mr Anderson said he assumed Dr Levy had known he was meeting with a 'representative of the government' when they met in the Premier's office.⁴⁰

On 1 November 2013, under further questioning from the Opposition Leader, Dr Levy had said, 'chairmen in the last 20 or 25 years have made comments about legislation and governments'.⁴¹ On 13 November 2013, Mr Peter Wellington MP said he had asked the library⁴² to do some research and quoted the response received:

'I was not able to find any other opinion piece written by Mr Levy prior to his appointment as the chairman of the CMC. With the exception of Mr Levy's

²⁹ *ibid* at page 4

³⁰ *ibid* at page 10

³¹ *ibid* at page 6

³² *ibid*

³³ *ibid*

³⁴ *ibid* at page 10

³⁵ *ibid* at page 8

³⁶ *ibid* at page 9

³⁷ *ibid* at page 9

³⁸ *ibid* at page 11

³⁹ PCMC public hearing 18 November 2013 transcript at page 16

⁴⁰ *ibid* at page 17

⁴¹ PCMC public hearing 1 November 2013 transcript at page 6

⁴² Presumably the Queensland Parliamentary Library

recent opinion piece in the *Courier-Mail* in relation to the anti-gang legislation, no chairperson of the CMC has made public comments regarding newly introduced or amended legislation'.⁴³

Sacking of the PCMC

On 21 November 2013, the Premier sacked the membership of the PCMC. This was an unprecedented move. The sacking meant the PCMC was unable to put the manifest inconsistencies between the evidence of Dr Levy and Mr Anderson to Dr Levy.

The Select Committee on Ethics

The inquiry into Dr Levy's evidence to the PCMC was removed from the reconstituted PCMC and taken over by the Select Committee on Ethics on the same day.

For a period of time in February 2014, the website for the Select Committee on Ethics ('the Select Committee') initially informed the public that public hearings would be held in the week beginning 20 January 2014, if required.

The morning after I sent an email to the research director of the Select Committee, this information was changed. I was informed by the research director that the timeframe for making written submissions to the inquiry had not been set and the timeframe for public hearings was being reconsidered.

On 23 January 2014, the Chair of the Select Committee issued a press release, referring to the need to afford procedural fairness to 'all persons involved' and the need to consider a 'large volume of material'.

On 11 March 2014, I again emailed the research director of the Select Committee, asking to be provided with the identity of any persons, apart from Dr Levy, who may need to be afforded procedural fairness. I also asked what additional information, apart from the transcripts of PCMC proceedings in November 2013, was being considered. These questions were asked to ensure interested parties could be in a proper position to make submissions to the Select Committee.

...

At the time of writing this submission, the Select Committee has not released any further information. It certainly has not cleared Dr Levy and has taken an approach which is entirely lacking in transparency.

Submissions

It is impossible to reconcile the versions of Dr Levy and Mr Anderson about the number and nature of discussions between the two men. If Mr Anderson's testimony

⁴³ PCMC public hearing 13 November 2013 transcript at page 6

is accurate, then Dr. Levy has misled the PCMC on a variety of issues on two separate occasions.

Specifically, Dr Levy has failed to disclose to the PCMC:

- the number of times he had contact with Mr Anderson;
- the fact it was Mr Anderson who suggested Des Houghton should conduct the interview with Dr Levy;
- that it was Mr Anderson who made contact with Des Houghton to discuss the proposed interview;
- that Dr Levy had a face-to-face meeting with Mr Anderson, on the 15th floor of the executive building, a few days before the article was published; and
- that Mr Anderson had suggested what the article would and would not discuss.

These are issues which were the subject of sustained questioning by the PCMC and Dr Levy has provided answers to questions before the PCMC directly contradicting the evidence of Mr Anderson.

Even more disturbing, there appears to have been a tendency on behalf of Dr Levy to 'drip-feed' information to the PCMC about his contacts with government figures prior to the publication of the article. It is trite to say that the situation of giving evidence before the PCMC is one in which the utmost candour and frankness is required of someone in Dr Levy's position.

It is inconceivable that Dr Levy cannot have known he was speaking to someone from the government when he was having discussions with Mr Anderson. The same can be said of any contacts he had with people from DJAG, a Department of which he was the Director-General for a period of several years.

It is noted that the Ethics Committee has today produced a report into the possible misleading of the Parliament by the Member for Mudgeeraba, Ms Ros Bates.⁴⁴ Ms Bates appears to have avoided being found in contempt of Parliament on the basis of the period of time which elapsed between late March 2012, when Ms Bates emailed her son's resume to five potential Ministers and Mr Caltabiano⁴⁵ and 15 October 2013, when she read her son's letter into the record, which contained the statement, 'nor did she ask anyone to give me a job'.⁴⁶

The Ethics Committee concluded that, at the time Ms Bates read that letter into the record she did not make a connection between that statement and the earlier emails she had sent on her son's behalf and she therefore did not know at the relevant time that the statement could be misleading.⁴⁷

This situation can be contrasted with that of Dr Levy. The events which Dr Levy appears not to have had in his consciousness occurred only a few days before the exchange with the Opposition Leader. It can be said with some confidence that Dr

⁴⁴ See

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T4884.pdf> for the report of the Ethics Committee tabled 11 April 2014

⁴⁵ Report of the Ethics Committee tabled 11 April 2014 at paragraph 23

⁴⁶ *ibid* at paragraph 3

⁴⁷ *ibid* at paragraph 46(b)

Levy would need to be capable of recalling such significant events occurring so recently in order to fulfil the requirements of his role.

It is noted that Dr Levy referred Ms Bates to the Ethics Committee in his role as Acting Chair.⁴⁸ It follows that in his role he certainly should have an acute awareness of the issues surrounding the possibility of misleading a Parliamentary Committee. This is in addition to his considerable experience and qualifications.

While these questions remain unanswered about the conduct of Dr Levy and there is no transparent process in place where the inconsistencies and apparent withholding of information can be properly investigated, there can be little public confidence in a CMC of which Dr Levy is Acting Chair.

Conclusion

Thank you again for the opportunity to comment on the draft legislation.

In conclusion, it is entirely inappropriate to legislatively extend the tenure of Dr Levy as Acting Chair of the CMC in all of the circumstances. It is submitted the transitional provisions should be deleted from the Bill.

Alex McKean

⁴⁸ *ibid* at paragraph 4