

LOCKHART RIVER ALLEGATIONS

A CMC report on an investigation into allegations of official misconduct arising from the presence of alcohol on the Queensland Government aircraft at the Lockhart River airport

Summary

The Commission has documented the circumstances surrounding the discovery of a bottle of wine in a government aircraft on the tarmac at Lockhart River airport, and has examined the events from the point of view of whether official misconduct took place.

The CMC has found no evidence to support the allegations against the Premier, the minister and the director-general. The Commission considers the following allegations are unsubstantiated:

- the Premier and the minister gave untruthful accounts in public concerning their knowledge of the presence of the wine on the aircraft
- the director-general and the minister misled the police concerning their knowledge of the presence of the wine on the aircraft
- there was political interference in the police investigation
- there was official misconduct associated with the offer of employment to Ms Mullan in the wake of her dismissal.

The CMC did not specifically investigate whether an offence under the Liquor Act had been committed, as this was left to the QPS.

The Commissioner of Police is of the opinion that no offence was constituted by the possession of the bottle in the plane on the tarmac, since the relevant statute did not apply unless the bottle was in a 'public place' and the plane on the tarmac was not such a place. The Commission agrees with the Commissioner of Police that there was no offence committed under the Liquor Act.

There is evidence which, if accepted, is capable of establishing that four officers gave misleading information to police but, in light of the decision of the Commissioner of Police and for the other reasons set out in this report, the CMC does not recommend disciplinary action be taken.

The Commission does not believe that further official attention to this whole issue is warranted.

CONTENTS

Catalyst for the CMC's investigation	3
The CMC's jurisdiction to investigate	5
The CMC's investigation	6
Sequence of events	7
Discussion	8
Who knew there was wine on board?	8
Did the director-general and the minister mislead the police?	10
Were truthful accounts given to the Premier and to the public?	10
Did Mr O'Brien mislead the police?	10
Did Ms Dunne mislead the police?	11
Did Mr Grady and Mr Litzow mislead the police?	13
Did Ms Mullan mislead the police?	13
Is disciplinary action warranted against any officer for misleading police?	14
Did the minister and/or the director-general approach Ms Dunne and Mr O'Brien?	15
Did the minister propose concocting a story for the police?	15
Was there political interference in the police investigation?	16
Was Ms Mullan offered 'shut-up money'?	17
Conclusion	18

CATALYST FOR THE CMC'S INVESTIGATION

On 2 March 2004, Queensland government jet VH-SGY set out from Brisbane for North Queensland. The aircraft landed in Pormpuraaw and then flew on to Weipa where the passengers and crew spent the night. The following day the passengers drove to Napranum and attended meetings, after which they returned to Weipa and flew on to Lockhart River.

The passengers on the flight from Brisbane to Weipa were:

- the Honourable Liddy Clark MP, Minister for Aboriginal and Torres Strait Islander Policy
- Mr Jason O'Brien MP, Member for Cook
- Dr Warren Hoey, Director-General, Department of Aboriginal and Torres Strait Islander Policy ('DATSIP')
- Ms Teresa Mullan, adviser to the minister
- Ms Catherine Dunne, policy adviser to the minister.

Mr Alan Butler, Regional Director, DATSIP, joined the group in Weipa and flew to Lockhart River with them on 3 March.

The pilots of the aircraft were Mr Calvin Grady and Mr John Litzow. They shared the duties of captain, with Mr Litzow assuming the position from Brisbane to Weipa, and Mr Grady from Weipa to Lockhart River and back to Brisbane.

Lockhart River is an Indigenous community situated on the east coast of Cape York Peninsula, 800 kilometres north of Cairns.

On 3 October 2003, the community area of the Lockhart River Aboriginal Council (apart from some exceptions not relevant here) and the Lockhart River airport were declared restricted areas under the *Liquor Act 1992*.¹ Being declared a restricted area means that no more than a prescribed quantity of liquor is allowed in the area — which, for the restricted areas at Lockhart River (other than the canteen) means no liquor at all.

The stated purpose of this legislation was to minimise harm caused by alcohol abuse and misuse and associated violence, and to minimise alcohol-related disturbances or public disorder in a locality. The creation of restricted areas is an important feature of the Queensland Government's Alcohol Management Plan for Indigenous communities. It has been, and continues to be, the subject of negotiation and consultation with those communities affected by the laws.

After the passengers had disembarked at the Lockhart River airport, the manager of the airport, Mr John Hardaker, noticed a bottle of wine on a shelf in the aircraft.

Later that day a police investigation commenced into whether a breach of the Liquor Act had been committed by taking the wine into a restricted area. The police found the wine on the plane.

Police interviewed all the passengers and crew that afternoon. Ms Mullan was the first of the passengers interviewed; she admitted taking the wine onto the aircraft, but said that no-one else knew she had done so, or that it was on the plane.

The matter came to the attention of the media and was published on the front page of the *Courier-Mail* newspaper on 4 March 2004 under the headline 'Minister's party breaks community booze ban'. The Premier and Minister for Trade, the Honourable Peter Beattie MP, was reported as saying to the media the previous night that he was 'frustrated and absolutely embarrassed' by the incident, and that 'whoever is responsible [for taking the wine to Lockhart River] will be sacked'.

On 4 March Ms Mullan was dismissed.

¹ Under section 168B(1) of the Liquor Act a person must not, in a public place in a restricted area to which the section applies because of a declaration, have in possession more than the prescribed quantity of liquor for the area, other than under the authority of a restricted area permit. The prescribed quantity for the restricted areas at Lockhart River, other than the canteen, is zero.

The following day, Ms Mullan sent an e-mail to Mr Rob Whiddon, Chief of Staff, Office of the Premier and Minister for Trade, in which she admitted lying to the police concerning other people's knowledge of the wine. She also made a number of allegations as follows:

- She 'had discussed the provision of wine with the Minister and another advisor Catherine Dunne' in the car on their way to the airport on 2 March.
- 'Everyone was well aware' there was wine for the trip home, and Mr O'Brien and Ms Dunne later indicated their intention to also purchase alcohol in Weipa, as the view was that one bottle among six people was not enough. She stated that she was now 'in the invidious position of covering up for everyone'.
- Unless he (Mr Whiddon), the minister and the director-general had misled the Premier about the facts of the matter, the Premier was knowingly misleading the media and the public by placing full blame for the matter on her.
- The local police told her they believed the matter had been taken out of their hands and was the subject of political interference, but if it had been left up to them they would have let the matter go.
- She was concerned that an offer of employment (since her dismissal) with a company 'with strong links to the Labor Party' was contingent on her continuing to maintain a 'mistruth' to the police (about who else knew of the wine on the aircraft) and that any term of employment would be temporary until 'this matter has passed from public appraisal'.

The contents of the e-mail were published in the *Courier-Mail* the next day, 6 March.

In view of the allegations contained in the e-mail, the CMC immediately began an investigation into whether there had been official misconduct by anyone in connection with the taking of alcohol to the Lockhart River airport. As there was an ongoing police investigation into a possible breach of the Liquor Act, it was decided, after consultation with the Commissioner of Police, that the CMC investigation would be conducted jointly with the Queensland Police Service (QPS).

During the investigation two additional allegations came to the CMC's attention:

- Ms Mullan had told the police that the minister and the director-general had approached Ms Dunne and Mr O'Brien before their (Dunne's and O'Brien's) police interviews at Lockhart River. Ms Mullan said she thought the minister and the director-general had told Dunne and O'Brien what she, Mullan, had already told the police — that she was solely responsible for the wine and no-one else knew of its existence. Ms Mullan said they did that 'so that they had consistency in the interests of protecting the others'.
- Ms Mullan provided a statutory declaration to the CMC in which she stated that on arrival at the Lockhart airport she could see there was a police four-wheel drive near the plane, and they were told that all the occupants of the plane were to be interviewed. She went on to declare: 'The others were briefed about the police request for statements. I then heard the Minister say in the presence of the Director-General, Warren Hoey, and myself that they [the rest of the passengers] should all say that: "Yes we all talked about it [i.e. the wine being on the plane] but everyone thought it was a joke". I knew this was untrue and I remember feeling quite sick about how the matter developed.'

Both of these apparently contradictory allegations concern conduct which, if true, could be interpreted as being designed to interfere in the police investigation.

On any version of events (including Mullan's), none of the passengers or crew was aware that possession of a bottle of wine on the tarmac at the airport might have constituted an offence. It is not in dispute that the only evidence concerning the consumption of the alcohol related to its possible consumption on the return journey to Brisbane.

THE CMC'S JURISDICTION TO INVESTIGATE

Section 33 of the *Crime and Misconduct Act 2001* provides that one of the CMC's misconduct functions is 'to ensure that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way'. The term 'deal with' is defined in Schedule 2 of the Act and includes investigating the information or matter.

The Crime and Misconduct Act defines misconduct as official misconduct. This means that, for a member of parliament or a departmental officer to commit official misconduct, the conduct in question must involve the exercise of the person's official powers in a way that is not honest or impartial; or be a breach of the trust placed in the person as a member of parliament or departmental officer; or involve a misuse of official information or material. Additionally, the conduct must (if proved) amount to either a criminal offence or a disciplinary breach providing reasonable grounds for dismissal.

There is no regime providing for the removal of a member of parliament for disciplinary breaches. For the conduct of a member of parliament to constitute official misconduct, therefore, it must be capable of amounting to a criminal offence.

In the e-mail to Mr Whiddon, Ms Mullan questioned whether the minister, Mr Whiddon and Dr Hoey provided truthful accounts in private concerning their knowledge of the presence of the wine on the aircraft and, in the case of the Premier and the minister, she questioned their public accounts. The CMC's jurisdiction to investigate this aspect of Ms Mullan's allegations extends only to the conduct of Mr Whiddon and Dr Hoey, because such conduct could amount only to a disciplinary breach and not a criminal offence.

It was alleged by Ms Mullan that 'everyone [on the plane] was well aware' there was alcohol on the plane. She stated that 'others on the plane may collectively deny the truth'. By inference she accused all the passengers and crew of lying to, or misleading, the police about their knowledge of the alcohol on the aircraft. In addition she provided information suggesting that the minister, and to a lesser extent Dr Hoey, engaged in conduct that, if true, could be interpreted as being designed to interfere in the police investigation.

The Commission is of the view that such conduct could, if proven, constitute a breach of the trust placed in public officials to be truthful to police, and not mislead them, during an investigation of a suspected offence committed by a person when carrying out their official duties.

Ms Mullan also held concerns that the offer of employment made to her after her dismissal was contingent on her continuing to maintain a 'mistruth' to the police.

The CMC investigation focused on whether any of the above conduct could, if proven, have constituted a criminal offence; and whether, for ministerial staff and departmental officers, the conduct could also, if proven, constitute a disciplinary breach providing reasonable grounds for dismissal.

The allegation of political interference in the police investigation lacked particularity. It seems to be suggested that the alleged political interference was designed to ensure that a full and thorough investigation was conducted rather than to stop the investigation. In that form the allegation was one of political interference in the exercise of a police officer's discretion whether to investigate an alleged offence and prosecute. The CMC conducted a number of inquiries to determine whether there was any evidence of official misconduct in this regard.

It should be noted that the CMC's jurisdiction to investigate this matter does not depend on whether or not an offence has been committed. For present purposes, it is sufficient that an alleged offence was being investigated by the QPS, regardless of the outcome of that investigation. Further, the CMC did not investigate whether an offence under the Liquor Act had been committed by any person. That investigation was undertaken by the QPS and the decision whether or not to prosecute was left for the QPS.

The Commissioner of Police has since advised the Commission that he has concluded the tarmac was not a public place at the time of the incident, and therefore no prosecution is to be initiated by the QPS. The Commission agrees with this conclusion.

As already indicated, this conclusion does not oust the CMC's jurisdiction to investigate the other matters alleged. However, it is clearly a relevant factor to consider when determining whether prosecution or disciplinary action should be considered.

It should be noted that, in the advice from the Commissioner of Police, he indicated that he intended to provide to the Minister for Police and Corrective Services a submission in respect of potential changes to the relevant legislation. The Commission considers that a review of the legislation may be warranted in light of the difficulties highlighted by this incident.

THE CMC'S INVESTIGATION

At the outset of the CMC's investigation, the QPS provided the CMC with all the relevant material it held. This included transcripts and tape recordings of all interviews that had been conducted, copies of a QPS report and a statement by one of the investigating officers, and photographs of the Lockhart River airport. Media reports frequently referred to 'witness statements' (a term sometimes used by the witnesses themselves) being provided to the QPS, but no formal written statement was completed by any witness. However, the aircraft crew and passengers all participated in tape-recorded interviews with police.

Shortly after the announcement of the CMC's investigation Mr Whiddon provided a number of documents to the CMC, together with an assurance that the CMC would be given the cooperation of any ministers, government officials and staff required to give evidence to the joint investigation. Throughout the investigation Mr Whiddon continued to provide documents.

It became apparent that much turned on which version of events should be accepted as truthful (there being a direct conflict of evidence from the witnesses on certain issues). For this reason, and because of the public interest in this matter, a decision was made by the Commission to conduct critical interviews by issuing witnesses with a Notice to Discover under section 75 of the Crime and Misconduct Act, which required them to provide an oral statement of information under oath. With the exception of Mr Butler (Regional Director, DATSIP), all of the passengers and crew were interviewed by the CMC in this way.

It was not thought necessary to serve a Notice to Discover on Mr Butler because there did not seem to be any conflict of evidence concerning his knowledge (or lack of it) of the wine on the plane. Ms Mullan, when interviewed by the police, told them that she could not be certain that Mr Butler knew the wine was on the plane. There was no evidence that he did know of the wine, and in his interview with police on 3 March he denied that he did.

Mr Whiddon was served with a Notice to Discover which, in addition to requiring him to provide an oral statement of information under oath, required him to provide all notes, diary entries, correspondence, memoranda, reports and other documents however stored, including copies and originals of such documents, as the case may be, connected with the matter.

The CMC also served a Notice to Discover on Ms Mullan, requiring her to produce a statutory declaration that she had prepared concerning these events. At her interview she produced two statutory declarations in response to the Notice to Discover (this report will treat the two as one).

The Commission wishes to emphasise that the service of Notices to Discover on these witnesses was not because of any actual, perceived or anticipated lack of cooperation on their part.

The CMC inspected the government aircraft and interviewed the following people:

- the Commissioner of Police, Mr Bob Atkinson APM
- Senior Constable Craig Roberts, who conducted the QPS investigation at Lockhart River, at which time he was Acting Sergeant
- Mr John Hardaker, Manager of the Lockhart River airport
- Mr Terry Kempnich, Managing Director of the Enhance Group.

THE SEQUENCE OF EVENTS

On the morning of 2 March, Ms Dunne was picked up from her home by the minister's driver, Mr Caswell. They drove to Ms Mullan's unit and, after collecting her, drove to Ms Dunne's daughter's home (to collect a camera) and from there to the minister's home. Mr Caswell then drove his three passengers to the Brisbane Airwing for the trip to North Queensland. All passengers gathered in a room at the Airwing and then proceeded to the aircraft. The bags were loaded by the pilots. Ms Mullan said she removed the bottle of wine from her bag and handed it to one of the pilots, saying that it was for the return journey.

After staying overnight in Weipa the group flew to Lockhart River on 3 March. After the passengers had left to attend meetings with the Lockhart River community the manager of the Lockhart River airport, Mr Hardaker, saw a bottle of wine on the plane. He said he believed alcohol was not permitted on the aircraft as it was in a restricted area. He suggested that Mr Litzow move it. He saw Mr Litzow take the bottle and disappear towards the rear of the plane.

Coincidentally, a short time later a commercial jet arrived at the airport on which there were Liquor Licensing officers. Mr Hardaker discussed the matter with them. It appears that the Liquor Licensing officers reported the matter to head office in Brisbane. They also spoke to the pilots.

Mr Whiddon told the CMC that he was contacted by Ms Helen Ringrose, Director-General, Department of Tourism, Fair Trading and Wine Industry Development on the afternoon of 3 March. Ms Ringrose's department is responsible for Liquor Licensing. She told him there was a problem: the government jet had landed in Lockhart River with Minister Clark and her director-general on board, and a bottle of wine had been found. She said it was a dry community. From this he understood that an offence had been committed. He told her the only way to deal with it was 'by the book', but he would talk to the Premier and get back to her. Mr Whiddon briefed the Premier, who told him: 'The only way to deal with this is by the book — tell Ringrose to just handle it by the book.'

At around the same time Mr Litzow alerted Mr Miles Currington, Chief Government Pilot, and advised him of a potential problem concerning the wine. During one conversation with Mr Currington he was told that the matter was already known in Brisbane and the Premier had been advised.

Mr Whiddon passed on the Premier's instruction to Ms Ringrose and asked what she would do. She told him she would have to alert the police. He was later advised that the police were searching the plane and he passed that information on to the Premier.

The CMC interviewed the Commissioner of Police, Mr Atkinson. He told the CMC that Ms Ringrose rang him and advised that alcohol had been seen on the government jet when it was being refuelled on the tarmac at Lockhart River. She told him that the minister and others were at Lockhart River, and that having alcohol on the plane would probably constitute a breach of the Liquor Act. She requested the assistance of the police to investigate. Mr Atkinson contacted Mr Peter Barron, Assistant Commissioner, Far Northern Region, and asked that officers attend.

Ms Ringrose also sent an e-mail to the Commissioner of Police in similar terms to the above.

Senior Constable Roberts told the CMC that on 3 March he was contacted by Assistant Commissioner Barron who told him that some alcohol had been seen on the plane. Mr Barron asked him to go out to the plane, search it, seize the bottle and conduct the investigation 'straight down the line'. He was told the minister 'and her entourage' were on the plane. Senior Constable Roberts said Assistant Commissioner Barron told him he had received a call about this matter from the Commissioner of Police and would be reporting back to him.

Mr Currington, acting on Mr Litzow's information, later rang Mr Whiddon and told him that the wine had been moved and the police had been unable to find it on the plane. Mr Whiddon told Mr Currington to tell the pilots to get the wine and give it to the police. He also updated the Premier on this development.

Mr Grady showed the police where the wine was stowed.

In his interview with the CMC, Commissioner Atkinson confirmed that he had been contacted by Mr Whiddon, who advised that the QPS officers had been unable to locate the wine but if they returned to the plane it would be handed over to them. The commissioner passed on the information to Assistant Commissioner Barron.

The commissioner said that later in the afternoon he received a telephone call from the Premier, who told him that the people involved should not be treated differently from anyone else by the police because of the positions they held, and the investigation should proceed as a normal police investigation. The Premier offered the government's full cooperation.

Police interviewed all the passengers and crew that afternoon. Ms Mullan admitted taking the wine on the aircraft but said no-one else knew that she had done so or that it was on the plane.

DISCUSSION

Who knew there was wine on board?

The issue of whether the passengers and crew knew there was wine on board the plane is significant, because it is central to whether they were truthful to the police when questioned, and to whether Mr Whiddon and Dr Hoey were truthful to the Premier (bearing in mind that no disciplinary action could be taken on what the minister told the Premier).

The allegation that 'everyone knew' the wine was on the plane comes from Ms Mullan. She has since qualified this statement by saying that that she could not be confident that Mr Butler was aware of its presence on the plane. Given her stance in this regard, Mr Butler's consistent denials, and his location at the rear of the plane (to which reference is made below), the Commission has found no evidence that he knew about the wine until he was told about it on the ground at Lockhart River.

As far as the passengers are concerned, Ms Mullan's opinion is based on conversations that she said she had with other people, or overheard, in the car on the way to the airport and/or in the air during the various flights. The conversations concerning the wine were brief.

For a criminal charge or a charge of official misconduct to be proven, a tribunal of fact must be satisfied to the requisite standard of proof that the person charged had lied about their knowledge of the wine on the plane. The criminal standard is *proof beyond reasonable doubt*. The standard of proof for a charge of official misconduct is the lesser standard of *balance of probabilities*. However, because dismissal is within the range of penalties that could be imposed for official misconduct, the law would require rather an elevated standard of proof.

Regarding the alleged conversations in the car on the way to the airport, no-one other than Ms Mullan recalled any conversation about Ms Mullan's wine in the presence of the minister. Ms Dunne recalled Ms Mullan merely saying, 'I have brought a bottle of wine', to which Ms Dunne replied, 'Have you?'; but this happened, according to Ms Dunne, as Ms Mullan entered the car. At that time the minister had yet to be collected.

In the Commission's view, the evidence of Ms Mullan alone is insufficient to conclude to the requisite standard that the minister participated in or overheard a conversation about the wine while in the car.

Ms Mullan said that she handed the wine to one of the pilots, and this occurred quite openly. She told the CMC she 'seriously doubted that other people wouldn't have seen me do it because we were all in a tight group'. However, none of the other passengers admits to seeing the wine at that time.

Ms Mullan's opinion does not constitute sufficient evidence on which to conclude that anyone else actually did see the wine. In the face of denials by the other passengers that they saw the wine, and in the absence of some objective evidence that they must have seen it, the CMC cannot conclude that it was seen as it was loaded.

Mr Litzow denied that he took the bottle from Ms Mullan. Mr Grady said that when they were loading the plane in Brisbane a bag was passed to him by the Chief Government Pilot (who was assisting with loading), which he was told contained something fragile, but he did not see any bottle of wine because the bag was closed. Mr Grady said he then placed the bag in a position to avoid damage to its contents. He said that when the passengers were disembarking at Weipa one of them asked him if it was all right to leave 'this' on the plane as it was for the trip home. He said he was initially not aware of what the item was, but he had no objection to it remaining on the plane. Later he saw that 'a bottle' had been left in the area where the bags had been stowed and he moved it to the bottom of an adjacent shelf (where it was later seen by Mr Hardaker).

There is also no evidence that any of the passengers saw the wine after it had been loaded. Indeed none of the other passengers admits to ever seeing it. Not even Ms Mullan says she saw it again after it was passed to the pilot. One can therefore exclude the possibility that the wine was in clear view on the plane during the journey and that there was an opportunity for the passengers to learn of its presence on the plane.

While Ms Mullan claims to recall some specific conversation on the plane about the wine (some of which is disputed by other witnesses), much of her opinion as to the knowledge of other passengers is based on her view that 'the jet ... it's such a small space that when you talk about stuff like that everybody is kind of in on the discussion' and 'everybody is in a position to hear'. She said the wine was openly discussed, by which she meant 'everyone could hear' the conversation.

Although the aircraft interior is small, logic suggests that not every conversation between two or more people will necessarily be heard by everyone else. By analogy, sharing a dining table with a group of other people is no guarantee of hearing everything that is discussed. The mere fact that someone is talking and another person is in a position to hear the words does not make it inevitable that the other person is listening.

Even Ms Mullan said that the conversations (on the plane) 'varied throughout the trip ... people would talk across [each other]'. She acknowledged that there were times when more than one conversation was occurring during the flight.

Ms Dunne disputed that everything said in the plane could be overheard by all the passengers. She said there was aircraft noise, and she had briefing material to read; and while she read she was not a party to conversations going on around her.

Mr O'Brien stated that on the trip to Weipa there 'were times when [he] just wasn't listening [to other conversations] and couldn't hear, couldn't care'.

Other than Ms Mullan, no passengers recall any conversations concerning the wine on the flight to Weipa on 2 March. Ms Dunne and Mr O'Brien do, however, say they recall a discussion concerning wine occurring on the flight to Lockhart River from Weipa.

In the Commission's view, in circumstances where a person denies having heard or being involved in a conversation concerning the wine, and in the absence of some objective evidence of that fact, the proposition argued by Ms Mullan that 'everybody is in a position to hear' is not a sufficient basis to reach, to the requisite standard, the conclusion that anyone else knew of the wine.

Ms Mullan was asked by CMC officers whether there was any specific comment she could recall the minister making in the plane concerning the wine. Ms Mullan told the CMC the minister commented during the flight that it was a good idea to have a drink on the way home; and she said this knowing, from what Ms Mullan had told her in the car, that there was a bottle of wine in the plane. The minister denied saying this, and no other witness recalled her making any comment about the wine at all during the flight. Ms Dunne and Mr O'Brien recalled a conversation with Ms Mullan on the flight to Lockhart River about having a glass of wine on the way home, but neither said the minister was party to that conversation.

Furthermore, the Commission has already concluded that Ms Mullan's account (denied by the minister and unsupported by any other person) of an alleged conversation in the car is of itself insufficient to justify a finding, to the requisite standard, that the minister participated in or overheard a conversation about the wine while in the car. The same conclusion must be drawn in regard to Ms Mullan's claim that the minister said it was a good idea to have a drink on the way home.

About Dr Hoey, Ms Mullan points to a comment that she alleges he made at Lockhart River as demonstrating his knowledge of the wine. She alleges he said: 'We've got a bit of a problem. You know your bottle of wine. It's been seen on the plane and a complaint has been made to Liquor Licensing.' Dr Hoey denied that he used these words; but even if he did, they do not necessarily mean that he must have known of the wine before the plane landed at Lockhart River. The use of the words is equally consistent with knowledge he said he gained from his deputy director-general, who informed him that one of the pilots had identified Ms Mullan as the owner of the wine.

Did the director-general and the minister mislead the police?

Essentially the issue of knowledge of the presence of the wine depends on an assessment of one person's evidence against another's. For the reasons stated above, the evidence is such that the Commission cannot conclude that the evidence of Ms Mullan could be relied on to prove to the requisite standard that Dr Hoey and the minister knew that there was wine on the plane.

The Commission is of the view that the allegation Dr Hoey and the minister misled the police concerning their knowledge of the presence of the wine on the aircraft has not been substantiated.

Ms Mullan told the CMC that while in the Lockhart River community she spoke to Mr Whiddon and admitted she was responsible for the wine. She said he asked her whether anyone else on the plane knew about the wine, specifically the minister and the director-general, to which she replied they all did. When interviewed by the CMC, Mr Whiddon agreed with Ms Mullan's recollection of this conversation. Mr Whiddon said that after talking to Ms Mullan he told the Premier about his conversation with her, including that she had said everyone knew the wine was on the plane.

Ms Mullan was asked to meet with Mr Whiddon the next day, which she did. She explained her position to him and was told she might have to 'be let go'. Mr Whiddon told her he would think about what she had said to him and he would be in touch with her.

Were truthful accounts given to the Premier and to the public?

Mr Whiddon then attended a meeting with the Premier, the minister and Dr Hoey. Ms Mullan was not present at that meeting. The minister, Mr Whiddon and Dr Hoey told the CMC that the Premier asked the minister and Dr Hoey whether they knew anything about the wine being on board the plane, and they denied that they did. This is consistent with the versions the minister and Dr Hoey gave to the police (and later to the CMC) and the version that the minister and the Premier gave in public.

Given that Ms Mullan was not at the meeting, her concerns about the truthfulness of accounts given to Mr Whiddon and the Premier by the minister and Dr Hoey were based on her opinion that any denials by them that they knew there was wine on the plane must be false. On the other hand, she argued, if they were truthful and admitted knowing of the wine, then the minister and the Premier lied to the public.

The Commission has already concluded that the evidence of Ms Mullan cannot be relied on to prove to the requisite standard that Dr Hoey and the minister knew there was wine on the plane. That being the case, and in view of the evidence of the minister, Mr Whiddon and Dr Hoey as to what was said at the meeting with the Premier, the Commission is of the view that the allegation that the minister, Mr Whiddon and Dr Hoey gave untruthful accounts to the Premier concerning their knowledge of the presence of the wine on the aircraft has not been substantiated.

It follows that the allegation that the Premier and the minister gave untruthful accounts in public concerning their knowledge of the presence of the wine on the aircraft has not been substantiated.

Did Mr O'Brien mislead the police?

Mr O'Brien, Member for Cook, told the CMC that during the flight to Lockhart River he felt unwell (because he had 'had a few' the previous evening) and commented to Ms

Mullan that he could not wait to get back on terra firma — to which she replied, ‘I’ve got one for the way home’ or ‘I’ve got a drink for the way home’. Mr O’Brien said he could not recall saying he was going to purchase a bottle of wine in Weipa, but he could very well have because ‘it is something I would say’. He also said he might have said on the flight to Lockhart River that one bottle among six would not be enough.

Mr Cleal, Deputy Chief of Staff, Office of the Premier and Cabinet, spoke to Mr O’Brien on 5 March about this matter. Mr Cleal kept a note of his conversation, and has written that Mr O’Brien said to him that he told the police he became aware the wine was on the plane once it left Weipa, that Ms Mullan had told him about the wine, and he responded that he had thought about getting a bottle of wine as well. Mr Cleal noted that Mr O’Brien told him that his conversation with Ms Mullan was a private conversation and he did not think anyone else would have heard it.

The transcript of Mr O’Brien’s interview with the police indicates that while he did admit to knowing about the wine, and that it was Ms Mullan’s, he did not respond that he had thought about getting a bottle himself. In his interview with the police Mr O’Brien further elaborated that he became aware of the wine on the plane after taking off from Weipa because ‘members of the party’ were talking about having a drink on the way home. This is contrary to what he told the CMC and Mr Cleal, but he explained to the police that he referred to members of the party being in the conversation in order to be ‘circumspect’ because he ‘didn’t want to put the finger on Teresa Mullan straight away’.

Mr O’Brien also said to police that when he was having his exchange with Ms Mullan on the topic there were a number of other conversations going on in the plane. He said that his discussion with Ms Mullan was private and could not be overheard by anyone, although he could not rule out that it had been overheard by Ms Dunne. He stated that the minister was not present, as she was at the rear of the plane with Dr Hoey and Mr Butler. He explained that the minister had left her seat (which had been opposite Ms Mullan’s). There is evidence from the minister, Dr Hoey and Mr Butler that they were engaged in conversation at the rear of the plane for much of the trip. Dr Hoey said he deliberately occupied the seat at the back of the plane so that he could talk at length with his regional director on the flight.

In conclusion, it can be said that Mr O’Brien admitted to the police that he knew the wine was on the plane and it belonged to Ms Mullan. He acknowledged to the CMC that he did not disclose to the police all the information he had concerning the presence of the bottle of wine on the plane, but his conduct falls well short of anything justifying the consideration of criminal proceedings against him.

Did Ms Dunne mislead the police?

Ms Dunne told the CMC she recalled that on the flight to Lockhart River Ms Mullan mentioned having a glass of wine on the way home. Ms Dunne told the CMC she said to Ms Mullan, ‘I had thought about buying a bottle of wine in Weipa’. Ms Dunne thought Mr O’Brien had said something to the effect that one bottle was not going to be enough between six people. Ms Mullan told the CMC that, during the flight to Lockhart River, Ms Dunne expressed regret at not having purchased a bottle of wine in Weipa.

Ms Dunne told the police that in Weipa the previous night ‘we’ were just talking about having a glass of wine on the way home. She presumed from the conversation that there was a bottle of wine. When asked whether she knew who brought it onto the plane, she said that Ms Mullan had given a statement and made it clear that she did (i.e. Ms Mullan). Ms Dunne said nothing of the conversation with Ms Mullan in the car or in the plane on the way to Lockhart River.

Ms Dunne was also contacted by Mr Cleal and, according to his notes, she told him that on the previous evening at Weipa there was a discussion among a number of people that it would be nice to have a drink when they left Lockhart River. She also told him that she told the police she was not aware whether there was bottle of wine on the plane when they arrived at Lockhart River. Mr Cleal put to her the statement in Ms Mullan’s e-mail concerning her discussion about wine in the car with the minister and Ms Dunne, to which Ms Dunne said she could not recall a bottle of wine being discussed on the trip to the airport. The notes record that she also told him she was unaware that there was bottle of wine on the plane; she might have discussed purchasing wine, but could not remember doing so. The notes also record her saying

that she definitely did not discuss one bottle among six people being an insufficient quantity.

She was not entirely frank with the police. She failed to mention that Ms Mullan had told her she had a bottle of wine, and that they had discussed having a glass of wine on the flight to Lockhart River. Rather, she said she presumed there was a bottle of wine on the plane because of a discussion she had the previous night at Weipa.

She persisted with this approach when questioned by Mr Cleal. In addition, when asked about Ms Mullan's allegation that she had discussed the wine with the minister and Ms Dunne in the car she said that she could not recall a bottle of wine being discussed on the trip to the airport. In a subsequent letter from her solicitor to Mr Whiddon she 'clarified' her response by advising him of the exchange she had with Ms Mullan when Ms Mullan got into the car. She told the CMC that her first response to Mr Cleal was accurate, given the issue was whether there was a conversation involving the minister.

She also told the CMC that her answers to the police were not inaccurate, as she had never seen a bottle of wine on the plane.

Solicitors for Ms Dunne submitted that her answers to the police and Mr Cleal were not misleading. In relation to the questioning by police, they submitted that the interview was not conducted in any searching or comprehensive manner. Further, they submitted that Ms Dunne was nervous and shocked when interviewed, and was not given the opportunity to outline everything she knew. However, they concede that Ms Dunne did not take it upon herself to expand further, partly because she knew that Ms Mullan had told police that no-one else knew of the wine.

With respect to the answers given by Ms Dunne to Mr Cleal, the solicitors for Ms Dunne submitted that Ms Dunne was attempting to convey to Mr Cleal her recollection of what she had told police, rather than giving him an independent recollection of events. The solicitors pointed out that Mr Cleal's note states: 'the information that was supplied to police by Catherine Dunne was along the lines of ...'.

The solicitors also submit that, at the time of the discussion with Mr Cleal, Ms Dunne did not recall what she had told the police, was confused, and so was reluctant to offer information that was not being asked for. The solicitors add that the statement in Mr Cleal's memorandum that Ms Dunne could not recall a bottle of wine being discussed on the trip to the airport was not clarified until she received, on 10 March, a copy of her transcript of interview with police.

In the Commission's view, there is evidence that, if accepted, would indicate that the answers given by Ms Dunne to the police and Mr Cleal were misleading — Ms Dunne had left the police and Mr Cleal with the understanding that she had no direct evidence of the wine being on the plane, even though she had Ms Mullan's admissions. During her interview with CMC officers she admitted to withholding the full truth from the police; this was, she said, in order to protect Ms Mullan, who had told Ms Dunne earlier in the day that she had confessed to the police that the wine was hers but told them no-one else knew of it. Ms Dunne knew that a full recounting to police of all she knew about the bottle of wine would have exposed Ms Mullan's lie to them.

In the Commission's view, her conduct does not justify the institution of criminal proceedings. She explained that her answers were given to protect Ms Mullan, who she believed had lied to the police about knowledge the other passengers and crew had of the wine. Her answers were not to protect Ms Mullan in respect of any possible criminal liability because Ms Mullan had, to Ms Dunne's knowledge, already confessed to the police. In addition, it is noted that she eventually voluntarily disclosed her knowledge of the wine on the plane.

A charge of official misconduct is open if, on the evidence provided, the conduct can (if proved) constitute a disciplinary breach providing reasonable grounds for dismissal. In the Commission's view, Ms Dunne's conduct falls well short of warranting such a serious sanction.

The code of conduct for ministerial staff sets out a number of ethics obligations. The first is 'respect of the law and the system of government'. It states that the obligation is based on the Queensland system of responsible parliamentary government, its conventions

such as ministerial responsibility, and the rule of law. It further states that the obligation means that the officer must act in the public interest.

In this particular case, in the Commission's view it would clearly not be in the public interest for Ms Dunne, having chosen to respond to the police and Mr Cleal, to leave them with the misapprehension that she had no direct evidence of the wine being on the plane. The question of whether, in the circumstances, disciplinary action is warranted will be considered later in the report.

Did Mr Grady and Mr Litzow mislead the police?

The senior investigating police officer in his report of 3 March 2004 recorded that he spoke to both pilots, telling them the police had been informed that there was alcohol on the aircraft. His report states that he asked them if they were aware of any alcohol being on the aircraft. It records that both stated to him that they were not. (None of these discussions was tape recorded.) The police searched the plane, without success. Subsequently Mr Litzow, after receiving advice from Chief Pilot Currington, told the police to look in the aircraft again as there was a bottle of alcohol in the rear compartment. The police did so but still could not find any alcohol. Mr Grady then opened a compartment that contained a bottle of wine.

When Mr Grady was later interviewed (on tape) by the police he said he was handed the bottle in Brisbane but he 'had no knowledge of what was in it and it didn't seem to matter much anyway'. He said when they landed at Lockhart River the airport manager advised them that 'there appeared to be or could have been a bottle of something on board. He didn't know what it was either ... I can't imagine'. He said he did not have a clue who owned the alcohol. He said that Mr Litzow and 'myself secured the ... the ... ah ... fluid down the back on the advice of the airport manager'. The police officer put to Mr Grady that when he was first approached by the police and asked about any alcohol on the plane he said there was none. Mr Grady replied, 'I'm not sure that I knew the precise details of that.'

When Mr Grady was interviewed by the CMC, he stood by his answers to the police and denied that he had misled the police in any way. Mr Grady also denied that he was ever asked by the police whether he knew there was any alcohol on board the plane. He explained that when the police first approached Mr Litzow he was not present, and joined the police on the plane later.

Mr Grady's solicitors seek to explain the answer Mr Grady gave to the police when they put to him that they were told when first approached by him that there was no alcohol on board: 'Mr Grady's reply was simply his way of saying he was not sure of what the question from the police referred to.'

In his interview (on tape) with police, Mr Litzow said he was not sure when he became aware that the bottle was on board. He also said that even when he realised it was there he 'wasn't sure what was in it'. He said it was a dark bottle which was lying on its side and all he could see was the [neck] end of it. When asked why he said earlier that he was not aware of any alcohol on the plane he repeated that he was not sure what was in the bottle. He said, 'I did carry it. But I didn't look at it. I just put it down the back. Simple as that.'

When interviewed by the CMC, Mr Litzow also denied misleading the police in any way.

On one view of the evidence, the pilots were untruthful to the police about their knowledge of the wine. In any event, it must have been clear to them that the police were searching for alcohol, given the events earlier in the day. They led the police to believe that they had exhausted their knowledge of the matter the police were investigating, until Mr Grady finally showed the bottle to Acting Sergeant Roberts during the second search.

In response to this conclusion, solicitors for Mr Grady state:

whilst it may be open, at best perhaps, for the Commission to find that Mr Grady in retrospect could have cooperated better with police in their investigations, this is far different from stating that on one view of the evidence, Mr Grady was untruthful to the police or failed to assist the police. Such a lack of cooperation, if any, must be

appreciated in light of the circumstances in which Mr Grady found himself. Those circumstances include the necessity to be focussed upon the safety of passengers on the plane, upcoming threatening weather conditions and general confusion.

Solicitors for Mr Litzow submit that the pilots were acting in a private capacity when answering questions from the police. The Commission rejects that submission. The pilots were clearly on duty at the time and were approached and questioned by the police in their capacity as pilots of the government jet. Indeed, there is no dispute that guidance was sought by Mr Litzow from the Brisbane office of the Government Airwing about the search.

On behalf of Mr Litzow, the solicitors submitted that it would be 'most unsafe' to rely on the police record for a number of reasons, including the fact that the initial discussions were not tape recorded, and the police report of those discussions was nothing more than a statement of impression.

Furthermore Mr Litzow's solicitors suggested that their client had no motive to mislead the police. Mr Grady's solicitors referred to the fact that there was no tape recording of the interview and no independent corroboration of the police version. They also referred to what they describe as the confusion at the airport.

Notwithstanding these submissions, the Commission remains of the view that there is evidence which, if accepted, would allow a finding that the pilots were untruthful to the police about their knowledge of the wine, and also, in responding to the police, that they led the police to believe that their responses had exhausted their knowledge of the matter. The contemporaneous report by the investigating police — in conjunction with the fact that, when the police put it to the pilots later in the day that they had earlier told police they knew nothing about the wine on board the plane, the pilots responded equivocally — is sufficient to allow a tribunal of fact to make the finding that the pilots had initially been untruthful.

The department's code of conduct sets out a number of ethics obligations. The first is 'respect for the law and the system of government'. It states that the obligation is based on Queensland's system of responsible parliamentary government, its conventions such as ministerial responsibility, and the rule of law. It further states that the obligation means that the officer must act in the public interest. It is not in the public interest for officers who have chosen to respond to police questions to be either untruthful to police or, by their responses, to lead police to believe that have exhausted their knowledge of the matter under investigation when that is not the case.

In the Commission's view the conduct of the pilots does not justify the institution of criminal proceedings or a charge of official misconduct. Once again, the question of whether any disciplinary action is warranted will be considered later in the report.

Did Ms Mullan mislead the police?

On her own admission, Ms Mullan did mislead the police. The Commission has given consideration to whether any action should be taken against Ms Mullan for lying to the police about whether anyone else knew of the wine on the plane.

In her favour it should be noted that she did confess to the police that it was she who brought the wine onto the plane. According to her, she told the lie on the spur of the moment in order to protect others and not herself. Furthermore, she later voluntarily advised the police that she had lied to them about whether anyone else knew of the wine — although this seems to have been motivated as much by her sense of betrayal as by a desire to be forthright with the police.

In all the circumstances, the Commission does not consider that criminal or official misconduct proceedings are warranted in Ms Mullan's case.

Ms Mullan's conduct has already been considered at length by the Premier and his Chief of Staff, Mr Whiddon. While neither person is director-general of the department in which she is employed, clearly they concluded that she should be reinstated, and the director-general of DATSIP has agreed with that course of action. Ms Mullan is subject to the same code of conduct as Ms Dunne.

Is disciplinary action warranted against any officer for misleading police?

It is appropriate at this stage to consider whether disciplinary action is warranted against Ms Mullan, and also the two pilots and Ms Dunne for misleading police. There is evidence which, if accepted, is capable of establishing a breach of the code of conduct by the four officers. It is not in the public interest for officers who have chosen to respond to police questioning to mislead police about matters under investigation. Ordinarily, if there is such evidence, disciplinary action would be recommended.

A relevant factor in assessing the officers' conduct is that prior to the police investigation none of the passengers (including Ms Mullan) believed that possession of a bottle of wine on the tarmac at the airport might constitute an offence. Furthermore, the Commissioner of Police has now concluded that possession of the bottle of wine in a government aircraft on the tarmac did not constitute an offence.

In relation to all four officers, they eventually did provide accounts to the police that assisted the police, and, in the case of the pilots, they showed the police where the bottle of wine was. All four officers have already been embarrassed by the incident, and will be further embarrassed by this report.

For the reasons expressed above, the Commission does not consider that disciplinary action is warranted against these officers.

Did the minister and/or the director-general approach Ms Dunne and Mr O'Brien?

During the investigation the CMC became aware that Ms Mullan told the police that the minister and the director-general had approached Ms Dunne and Mr O'Brien before their (Dunne's and O'Brien's) police interviews at Lockhart River. Ms Mullan said she thought the minister and the director-general had told them what Ms Mullan had admitted to the police (i.e. that she was solely responsible for the wine and no-one else knew of its existence). Ms Mullan said they did that 'so that they had consistency in the interests of protecting the others'.

The allegation is entirely speculative, as Ms Mullan was not present when the alleged conversations occurred.

Dr Hoey said the minister told him to go and brief Mr O'Brien, which he did. He said he spoke to Mr O'Brien for about 30 seconds, during which time he told him the police wished to interview them about a bottle of wine, which had been found on the plane in breach of regulations. Dr Hoey said that in response Mr O'Brien thanked him. The CMC spoke to Mr O'Brien who gave a similar account of the conversation. Dr Hoey denied telling Mr O'Brien what Ms Mullan had told the police.

Ms Dunne told the CMC that someone — she could not recall who — told her at the airport that they were all to be interviewed by the police. She said no-one told her what to say to the police and no-one apart from Ms Mullan herself told her what Ms Mullan had already said to the police.

The minister told the CMC that she did not know with certainty that Ms Mullan had been interviewed by the police by the time they returned to the airport, but presumed that she had. However, she said she did not know what Ms Mullan had told the police.

In the Commission's view there is no evidence that the minister and/or Dr Hoey approached Ms Dunne and Mr O'Brien and told them what Ms Mullan had already told the police in order to have 'consistency in the interests of protecting the others'.

Did the minister propose concocting a story for the police?

A second allegation arose during the course of the CMC's investigation when Ms Mullan provided the statutory declaration. In this she alleged that, on returning to the Lockhart River airport, she could see there was a police four-wheel drive near the plane and they were told all of the occupants on the plane were to be interviewed. She went

on to write: 'The others were briefed about the police request for statements. I then heard the minister say in the presence of the director-general, Warren Hoey, and myself that they [the rest of the passengers] should all say that: "Yes we all talked about it [i.e. the wine being on the plane] but everyone thought it was a joke". I knew this was untrue and I remember feeling quite sick about how the matter developed.'

This is a serious allegation because Ms Mullan has alleged that the minister was suggesting to Dr Hoey and Ms Mullan that the police be told something that was untrue — that the witnesses lie to the police. Such an interpretation was put to Ms Mullan when she was interviewed by the CMC; however, she refused to acknowledge that interpretation. Rather, she said that people did not realise the seriousness of what was going on, and were more worried about the 'political consequences, the embarrassment'. Ms Mullan said that what the minister 'was suggesting was to minimise the whole situation'.

In assessing the reliability of what Ms Mullan has alleged the minister said, it is instructive to consider whether she made the allegation at the first reasonable opportunity. She had many prior opportunities to raise it, but Ms Mullan's allegation came to the CMC's attention for the first and only time in her statutory declaration. She did not mention it to the police in Brisbane at a later interview (even though she did say what she *thought* the minister and Dr Hoey were telling two of the other passengers at around this time). She explained to the CMC that she told the police the truth and did not deliberately withhold any information from them. However, she said she was tired, she had not slept for two days and (for this reason) there were probably a lot of things she did not raise with them.

Ms Mullan did not raise the allegation in her e-mail to Mr Whiddon or in an interview on 4QR Radio on 8 March. Before her interview with the CMC she thought she might have told her father, and a barrister who rang her up and to whom she gave information about the matter. She did not think she told Mr Whiddon.

It is also noted that the stance that the minister was allegedly suggesting to Dr Hoey would have been inconsistent with the information that Ms Mullan thought they (the minister and Dr Hoey) were giving to Mr O'Brien and Ms Dunne at the airport: namely that Ms Mullan had already admitted responsibility for the wine and no-one else knew of it.

Both the minister and Dr Hoey denied that the minister made the statement attributed to her by Ms Mullan.

In the circumstances, the Commission is of the view that the allegation has not been substantiated.

Was there political interference in the police investigation?

Senior Constable Roberts (then Acting Sergeant) and Constable Blackburn (then Acting Senior Constable, also relieving at Lockhart River) conducted the investigation into this matter.

Ms Mullan said in her e-mail to Mr Whiddon that the local police told her they believed the matter had been taken out of their hands and was the subject of political interference; if it had been left up to them they would have let the matter go. When she was interviewed by the CMC, she said there was no suggestion the police were not committed to the investigation.

She told the CMC she could not recall whether one or both of the investigating officers made the statement to her, but it occurred at the Lockhart River Council Chambers when the police informed her that they wanted to conduct a formal interview with her.

Senior Constable Roberts said that at no stage did he say to Ms Mullan that the matter had been taken out of their hands or that there was political interference. He did not consider there had been political interference. He said that after Ms Mullan was interviewed she asked him what would happen next and he advised her he would be compiling a report which would be sent to the Assistant Commissioner in Cairns.

On the information available to the CMC there is no evidence of any political interference in the police investigation. On the contrary, the evidence is that the Premier

and Chief of Staff acted entirely appropriately and were of assistance to the police in the matter. The CMC notes in this regard that on 15 March the Commissioner of Police wrote to the Leader of the Opposition, Mr Lawrence Springborg MP, and advised him that Mr Whiddon was of assistance to the police during the initial investigation. He went on to write that 'the proposition that [Mr Whiddon] may have or may attempt to hamper investigations into this matter is not supported from the established factual material available to me'.

Was Ms Mullan offered 'shut-up money'?

In her e-mail to Mr Whiddon, Ms Mullan stated:

I am also concerned that following my discussions with [the Deputy Chief of Staff Office of the Premier and Cabinet] yesterday afternoon regarding my employment prospects and legal advice on the police investigation I received a telephone call at 8.30 pm last night advising me that a job was immediately available [with] a company with strong links to the Labor Party. I am concerned that my acceptance of such a position would be contingent upon me continuing to maintain a mistruth to the police and that any term of employment would be temporary until this matter has passed from public appraisal.

Ms Mullan told the CMC that she received the telephone call from an 'old friend and colleague', one C, who sympathised with her and indicated that a position might be available with a consulting company if she were interested. She said she took the offer to help her as quite genuine and still does. She said she expressed her interest in the job and about five minutes later she received another telephone call from C who told her that an \$80 000 per annum position was immediately available with Enhance Management and she should ring Terry Kempnich the following morning. After thinking about it further she decided not to pursue the matter.

Ms Mullan told the CMC that C placed no conditions on the job offer nor was there any suggestion that she would get the job if she went quietly.

Ms Mullan told the CMC that her concern arose because of advice she received from a friend in whom she confided about the offer of employment. She said this person, whom she described as having 'lots of experience with the government and with the [Labor] Party', told her that the offer was 'shut up money', the job would have no long-term security, it would not be in her interests to accept the offer, and not to touch it with a 10-foot barge pole.

She said she did not discuss the offer with the Premier, Mr Whiddon or anyone else in government.

Mr Whiddon was interviewed by the CMC about the offer of employment. He said that at about 7.30 pm on 5 March he was contacted by C who worked for a government instrumentality but some time previously had worked for a Labor minister. Mr Whiddon described C as a passionate person who was very angry about Ms Mullan's dismissal. C wanted to help Ms Mullan and asked whether Mr Whiddon had any difficulty with that. He told C he did not.

The CMC interviewed Mr Kempnich, Managing Director of the Enhance Group (which comprises three companies), which he helped establish in 1996. Before taking up this position he had been a policy adviser to several Queensland Labor ministers. He told the CMC that a company of Mr Elder, the former deputy Premier, is in partnership with one of the firms in the Enhance Group.

Mr Kempnich told the CMC on 4 March he was contacted by C, who was looking to do something for Ms Mullan. He said C told him that Ms Mullan was a single mother of three children, and he was very angry about what had happened to her. Mr Kempnich said he did not offer her a job with his company. He explained to the CMC that when C rang him the Enhance Group had just appointed a person to a position with the company who could not start for some four to six weeks. He said he told C that Ms Mullan might be able to fill the vacancy during that time, but he did not know whether she had the skills to do the job. He suggested that C advise Ms Mullan to ring him and discuss the position. She never rang him.

After the e-mail was published in the *Courier-Mail* newspaper, the *Australian* newspaper reported that Mr Kempnich denied there was anything improper in the job offer or that it was an attempt to buy Ms Mullan's silence. He was reported as saying that he 'could not imagine any circumstances in which the government would ring us up to employ someone'. He said the company had ties with all political parties.

Mr Kempnich stated that, while the article in the *Australian* newspaper correctly quoted him, it wrongly stated that he had offered Ms Mullan a job. This error was the subject of a correction by the *Australian* on 2 April 2004.

In all the circumstances, the CMC is satisfied that there is no evidence of official misconduct associated with possible employment of Ms Mullan at Enhance Management.

CONCLUSION

The CMC has examined the events from the point of view of whether official misconduct took place. It did not specifically investigate whether an offence under the Liquor Act had been committed, as this was left to the QPS. The Commission agrees with the Commissioner of Police that there was no offence under the Liquor Act.

The CMC has found no evidence to support the allegations against the Premier, the minister and the director-general.

The Commission considers the following allegations are unsubstantiated:

- the Premier and the minister gave untruthful accounts in public concerning their knowledge of the presence of the wine on the aircraft
- the director-general and the minister misled the police concerning their knowledge of the presence of the wine on the aircraft
- there was political interference in the police investigation
- there was official misconduct associated with the offer of employment to Ms Mullan in the wake of her dismissal.

The Commission considers that the conduct of the Member for Cook, Mr O'Brien, falls well short of anything justifying the consideration of criminal proceedings, even though he acknowledged to the CMC that he did not disclose to the police all the information he had concerning the presence of the bottle of wine on the plane.

There is evidence which, if accepted, is capable of establishing that four officers gave misleading information to the police about the wine, but, in light of the decision of the Commissioner of Police and for the other reasons set out in this report, the CMC does not recommend disciplinary action be taken.