



# PALM ISLAND AIRFARE CONTROVERSY

A CMC report on an investigation into allegations of official misconduct arising from certain travel arrangements authorised by the Minister for Aboriginal and Torres Strait Islander Policy.

CRIME AND  
MISCONDUCT  
COMMISSION



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## SEQUENCE OF EVENTS

**Friday 19 November 2004.** Palm Island resident Mulrunji Doomadgee dies shortly after being arrested by police.

**Friday 26 November.** Public order breaks down on Palm Island. Government buildings, including the Island's police station, are set on fire and destroyed. A large number of police officers arrive on Palm Island to restore order and arrest rioters. In the days that follow, several senior government members visit Palm Island. The Minister for Aboriginal and Torres Strait Islander Policy, Ms Liddy Clark, is criticised in the media for not visiting the Island.

**Thursday 9 December.** At a public rally in Townsville, prominent Indigenous activist Mr Murrandoo Yanner urges Indigenous people on Palm Island to commit further violent acts against police officers and public property.

**Wednesday 15 December.** Ms Liddy Clark hosts a meeting attended by Mr Murrandoo Yanner and Mr Bradley Foster in their capacity as representatives of the Carpentaria Land Council. Later that day, the minister's office makes airline reservations for her to visit Palm Island at the end of the week. Reservations are also made for Mr Foster and Mr Yanner to accompany the minister. The minister's senior policy adviser, Mr Bruce Picard, informs the Premier's office of the arrangements and that the minister's office will be meeting the cost of Mr Yanner's and Mr Foster's airfares.

**Thursday 16 December.** Journalist from the *Australian* newspaper seeks comment from the Queensland Police Union as to the minister's decision to have Mr Yanner and Mr Foster accompany her to Palm Island. Later that day the minister's senior media adviser, Ms Marie Low, issues a press statement to the *Australian* stating that Mr Yanner and Mr Foster will be reimbursing the cost of their own travel.

**Friday 17 December.** The minister's party visits Palm Island accompanied by Mr Foster. Mr Yanner does not join them. The Premier, speaking on Radio 4BC, makes it clear that he does not want taxpayers paying for Mr Yanner's or Mr Foster's airfares. The minister, speaking on ABC Radio, says that she has always understood that Mr Yanner and Mr Foster would be reimbursing the minister's office for the cost of their airfares. The *Australian* takes issue with the minister's assertion, pointing out that both Mr Yanner and Mr Foster have no such understanding.

**Saturday 18 & Sunday 19 December.** Allegations of a 'cover-up' by the Government appear in the media and on the ABC website 'Message Stick'.

**Monday 20 December.** The minister personally reimburses her department for the cost of Mr Foster's and Mr Yanner's airfares. The CMC begins its assessment of the matter.

## SUMMARY OF ALLEGATIONS

- The office of the Minister for Aboriginal and Torres Strait Islander Policy, the Honourable Liddy Clark MP, issued a false, or otherwise misleading, press statement about who was paying for certain airfares to Palm Island on Friday 17 December 2004.
- Staff of the minister's office attempted to coerce Mr Murradoo Yanner and Mr Bradley Foster of the Carpentaria Land Council into lying about the travel arrangements to Palm Island.
- The Director-General of the Department of Aboriginal and Torres Strait Islander Policy, Dr Warren Hoey, was involved in concocting a cover-up strategy.
- Staff in the Premier's office were involved in concocting a cover-up strategy.

## SUMMARY OF CMC FINDINGS

Person	CMC findings
<b>Mr Picard</b> , minister's Senior Policy Adviser, and <b>Ms Low</b> , minister's Senior Media Adviser	The CMC considers that, while the conduct of Mr Picard and Ms Low does not warrant dismissal (and therefore does not constitute official misconduct), there is nonetheless sufficient evidence to justify the consideration of disciplinary action against them for their respective roles in preparing and issuing a false press statement. Accordingly, this report will be sent to the Director-General of the Department of the Premier and Cabinet to determine what disciplinary action, if any, is warranted.
The <b>Honourable Liddy Clark MP</b> , Minister for Aboriginal and Torres Strait Islander Policy	The minister gave her approval to the release of a press statement that she either knew or, at the very least ought to have known, was false. While such conduct does not constitute a criminal offence (and, as such, cannot amount to official misconduct in the case of a member of parliament), this case demonstrates that ministerial staff can act in a way that warrants consideration of disciplinary action, while at the same time the responsible minister is unable to be disciplined even though not entirely blameless.
<b>Mr Keating</b> , Deputy Director of the Government Media Unit, Premier's office	There exists no justifiable basis for disciplinary action against Mr Keating for the issuing of the false press statement. While in hindsight it might seem that Mr Keating should have noticed the inconsistency in the email issued by the minister's office, compared with the earlier advice provided to the Premier's office, the reality was that he did not have primary responsibility for composing the email, nor did he have direct knowledge of the events described therein.
<b>Mr Widdon</b> , Chief of Staff to the Premier	There is no basis for disciplinary action against Mr Whiddon for the issuing of a false press statement — he was even further removed from the events of 16 December 2004 than Mr Keating.
<b>Staff of the Premier's office</b>	The allegation that staff of the Premier's office were involved in a cover-up strategy is unsubstantiated and is considered unlikely to have occurred.
<b>Dr Hoey</b> , Director-General of the Department of Aboriginal and Torres Strait Islander Policy	The allegation that Dr Hoey was involved in a cover-up strategy is unsubstantiated and is considered unlikely to have occurred.

## CONTEXT FOR, AND SCOPE OF, THE CMC INVESTIGATION

### Context

To understand how this matter arose, it is useful to go back over the events of November and December 2004.

At some time on the morning of **Friday 19 November 2004**, police officers on Palm Island, in north Queensland, arrested Mulrunji Doomadgee,<sup>1</sup> a local 36-year-old Indigenous man, for being a public nuisance.<sup>2</sup> Within an hour of his arrest, and only a short time after being placed in a cell at the Island's police station, Mr Doomadgee was dead. Over the ensuing week, accusations were raised by some within the Palm Island community that Mr Doomadgee had been mistreated by police officers, and that he had died from injuries received in the course of that mistreatment.

The circumstances of Mr Doomadgee's death, and the events surrounding his apprehension by police officers that morning, are the subject of a coronial inquiry.

One week later, on **26 November 2004**, public order on Palm Island broke down. Government buildings — including the Island's police station — were set on fire and destroyed. In response, a large number of police officers, including officers trained and equipped for special emergency response operations, arrived on Palm Island to restore public order and to seek out those individuals responsible for inciting violence and committing related offences. A number of members of the Palm Island community were arrested and jailed.

On **Thursday 9 December 2004**, a public rally was held in Townsville to protest against Mr Doomadgee's death. At this rally, Indigenous activist Mr Murradoo Yanner — a resident of Burketown in the Gulf of Carpentaria and a representative of the Carpentaria Land Council — spoke in support of those who had been arrested over involvement in the violent events of 26 November. Media coverage of the rally reported that Mr Yanner urged Indigenous people on Palm Island to commit further violent acts against police officers and public property. In particular, Mr Yanner was quoted<sup>3</sup> as saying:

Deck that policeman hurting your brother, burn that police station protecting a murderer because that's something honourable rather than going for bashing your kids or your wife. ... Go for an honourable crime.

Mr Yanner's agitation drew various public responses of condemnation, including a newspaper editorial,<sup>4</sup> and newspaper articles purporting to quote the Commissioner of Police<sup>5</sup> and the Queensland Police Union of Employees (Police Union).<sup>6</sup>

In the period immediately after the events of 26 November, a number of senior government members, excluding the Minister for Aboriginal and Torres Strait Islander Policy, visited Palm Island. The minister's absence became the subject of observation and criticism in the media.<sup>7</sup>

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1 Mr Doomadgee was more commonly known as Cameron Doomadgee.

2 Under section 7AA *Vagrants, Gaming and Other Offences Act 1931*.

3 In article, 'Hundreds join march over Palm Island death', 9 December 2004, ABC 'Message Stick' website: <[http://www.abc.net.au/message/news/stories/ms\\_news\\_1261661.htm](http://www.abc.net.au/message/news/stories/ms_news_1261661.htm)>.

4 The *Sunday Mail*, 12 December 2004, Editorial, page 75.

5 'I would hate to see people like that get elevated to a level of importance or status or credibility that they really, quite frankly, don't deserve.' Statement attributed to the Commissioner of Police in article, 'Hundreds join march over Palm Island death', the *Sunday Mail*, 9 December 2004.

6 'Queensland Police Union acting president Denis Fitzpatrick said Mr Yanner was "a mere criminal in search of a meaningful existence"', in article by Tony Koch & Kan Gerard, 'Police kill call raises tension', *Advertiser* [Adelaide], 1 December 2004.

7 For example, article in the *Australian* 'Storm at Yanner flight with minister', 17 December 2004.

On the morning of **Wednesday 15 December**, the minister hosted a meeting attended by Mr Bradley Foster and Mr Yanner in their capacity as representatives of the Carpentaria Land Council.<sup>8</sup> During the meeting, which took place in the Brisbane office of the Department of Aboriginal and Torres Strait Islander Policy ('the department'), the minister informed Mr Foster and Mr Yanner of her intention to visit Palm Island on Friday 17 December.

Later that day, the minister directed her personal assistant to make the necessary airline reservations so that Mr Foster and Mr Yanner could accompany her on her visit to Palm Island. Mr Foster and Mr Yanner were duly booked to travel from Brisbane to Townsville the next day, Thursday 16 December, on Qantas flight QF972, which was scheduled to depart Brisbane at 1.20 pm and arrive in Townsville at 3.10 pm.<sup>9</sup> Once the reservations were confirmed, the minister's personal assistance telephoned the details through to Mr Foster and Mr Yanner.

At 4.04 pm that afternoon, the minister's senior policy adviser, Mr Bruce Picard, sent an email to the Premier's office announcing that the minister, together with the Honourable Mike Reynolds (Minister for Child Safety and Member for Townsville), intended visiting Palm Island. The email also advised that Mr Foster and Mr Yanner were to accompany the minister, and that the minister's office had agreed to pay for their airfares.

The email read:

Ministers Clark and Reynolds are travelling to Palm Island on Friday. There will be considerable media interest. This morning Minister Clark had a long meeting with Murrandoo Yanner and Brad Foster in her office. As it turned out it was a very positive meeting and later in the morning I received a call from Brad Foster volunteering himself and Murrandoo to be on the island with the Minister. They gave an assurance their attendance would be in the interest of keeping the peace and making sure the Minister had a fair hearing. In all the circumstances, the idea had merit. Going to the island and talking to the Mayor alone had greater risks for the Government than the course we have decided to follow. Given Cabinet's decision on Monday that we needed to start a negotiation process was also part of the reason **this office has agreed to pay their airfare (economy) to Palm Island for the meeting**. The media will be surprised to see the Ministers and the two gentlemen concerned get off the plane together. Minister Reynold's office has been consulted.

(Emphasis added)

Then, at some point on **Thursday 16 December**, the minister's Senior Media Adviser, Ms Marie Low, learned that a journalist from the *Australian* newspaper (Ms Cath Hart) was preparing an article based on comments from the Police Union critical of the minister's plans to have Mr Foster and Mr Yanner accompany her on the Palm Island visit.

According to information provided to the CMC by the journalist, Ms Low contacted the *Australian* between 5 and 6 pm that afternoon, requesting that the journalist await a press statement from the minister, and to consider the contents of that statement in any article that might be published about the issue. The journalist told Ms Low that any such comments would be incorporated into the article.

Liaising with the Premier's office, Ms Low set about drafting a suitable press statement. She sent a series of three emails (setting out the draft in progress)<sup>10</sup> to Mr Steve Keating, Deputy Director of the Government Media Unit and a media adviser employed by the Premier's office.

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8 The Carpentaria Land Council is an organisation recognised by the Australian Government as representing Indigenous interests in native title matters in the region of western Queensland. It is so registered in Queensland by the minister. Mr Foster is the CEO.

9 While it was not necessary to confirm whether the air travel took place in accordance with the reservations, it appears it did.

10 The emails were sent at 5.41 pm, 5.54 pm and 5.56 pm, respectively.

At 6.03 pm, with the minister's approval, Ms Low emailed the following press statement to the *Australian*:

**Minister for Aboriginal and Torres Strait Islander Policy**

We are trying to listen [to] and meet the concerns of the people of Palm Island.

Murrandoo Yanner and Brad Foster have been two of the leading spokespeople for the Palm Island community. They made the offer to assist in restoring peace and calm on the island following a long and constructive meeting with the Minister for Aboriginal and Torres Strait Islander Policy Minister [*sic.*] in Brisbane yesterday.

**Because it was short notice, we agreed to assist with the airline bookings on the understanding that they would pick up the cost.** They have met their own accommodation costs in Townsville.

(Emphasis added)

The statement to the *Australian* was identical to the final draft of the one Ms Low sent to Mr Keating at 5.56 pm.

Later that evening, the minister and Ms Low travelled from Brisbane to Townsville in preparation for the minister's visit to Palm Island the next day.

Early on the morning of **Friday 17 December 2004**, the minister's party — comprising the minister, the Honourable Mike Reynolds, Ms Low, a member of Mr Reynold's staff, an officer from the Townsville office of the department, and Mr Foster — travelled from Townsville to Palm Island. Although Mr Yanner had travelled from Brisbane to Townsville, he did not present himself at Townsville Airport for the journey to Palm Island, and was not sighted by the minister's party that day.

By the time of her departure from Townsville for Palm Island, the fact that the minister had agreed to Mr Foster and Mr Yanner accompanying her had become an issue in the various media. A radio news bulletin broadcast on ABC Radio (612 Brisbane) that morning contained a voice recording of an interview with the minister. The following portion of the interview — being comments by the minister herself — was broadcast:

It was the fact that it is a commercial flight; there are not many seats on the plane; we had booked ours; we suggested we're booking ours at the moment, we will book your seats as well, and then we will issue the bill when it comes in. That was always the understanding.

At about the same time, the Premier, the Honourable Peter Beattie MP, appeared as a guest on Radio 4BC (1116 Brisbane). On being challenged over the issue of Mr Foster and Mr Yanner accompanying the minister to Palm Island, the Premier made the following statements:

... They had a meeting. They offered to go across with her. She invited them, they offered, whatever. I don't know. But they're going across to help try and improve relations. I think that's a good thing.

... It's a public plane. It's not a government plane. What simply happened was ... they had a meeting. On short notice he offered or she asked, I can't, I don't know, to go across. She indicated that she was prepared to pay, initially, for the airfare over and that would be reimbursed. I've made it absolutely clear that Murrandoo will pay his own airfare and so will the other gentleman, Brad Foster.

... If he [Murrandoo Yanner] can improve relations so we can start fixing up some of these terrible problems then I'm prepared to cop that. But not one cent of taxpayer's money in the final analysis will go to his airfare. He'll pay his own.

... I didn't agree and don't agree with the airfares being paid. If they're paid or have been paid they will be reimbursed. I'm checking that out at the moment. But one thing is clear: the taxpayers won't pay for these airfares. That's simple.

An article published in the *Australian* that morning<sup>11</sup> took issue with the assertion that Mr Foster and Mr Yanner were to reimburse the cost of their airline tickets. The article read as follows:

#### **Storm at Yanner flight with minister**

Aboriginal activist Murrandoo Yanner, accused of inciting violence against police after last month's Palm Island riots, will fly at taxpayers' expense to the troubled community today with Queensland Indigenous Policy Minister Liddy Clark.

However, Ms Clark, under pressure for not visiting the island since the riots, said Mr Yanner and Carpentaria Land Council chief executive Bradley Foster had agreed to reimburse the Government for the cost of the Brisbane–Townsville–Palm Island fares.

"Because it was short notice, we agreed to assist with the airline bookings on the understanding they would pick up the cost. They have met their own accommodation costs in Townsville," the minister's office said last night.

But both Mr Yanner and Mr Foster, who acts as the spokesman for Palm Island residents, denied this.

"That is absolute rubbish," Mr Foster said. "There was no suggestion of reimbursement. If they wanted us to pay we'd still be in Brisbane. We both have plenty else to do."

... Mr Yanner confirmed Ms Clark had asked him and Mr Foster to accompany her to the island. "We want her to come because Liddy Clark has an empathy with indigenous people," Mr Yanner said.

... The statement from Ms Clark's office said Mr Yanner and Mr Foster had offered to assist in restoring peace.

On **17 December 2004**, an invoice in the sum of \$1777.34 and addressed to the Carpentaria Land Council was prepared by the Ministerial Services Branch of the Department of the Premier and Cabinet but not sent. The invoice was prepared at the request of the minister. The sum comprised \$1140.28 covering airfares for Mr Foster (return Brisbane–Townsville) and \$637.06 for Mr Yanner (one way Brisbane–Townsville<sup>12</sup> and return Townsville–Palm Island).

By the weekend of **18–19 December 2004**, the media was exploring accusations of a 'cover-up', and highlighting apparent conflict in statements made by certain parties.

An article published on the ABC's 'Message Stick' website contains a convenient summary of the issues and the situation being promoted by the media on 18 December.<sup>13</sup> The article, 'Qld Minister Accused of Airfare Cover-Up', reads, in part:

Aboriginal activist Murrandoo Yanner has accused Queensland Indigenous Affairs Minister Liddy Clark of spearheading a Government cover-up over who paid for airfares to Palm Island in north Queensland.

Mr Yanner says two senior public servants from Ms Clark's department called him on Thursday night and asked him to lie to the media to help the Government out of an embarrassing dispute with the police union and the State Opposition.

The union and the Opposition had attacked the Government for inviting Mr Yanner to Palm Island and for paying for his fare.

The controversial Indigenous leader has angered police by calling them murderers and suggesting there may be payback for the death of a Palm Island man in police custody.

Mr Yanner says the Government is desperately trying to cover-up an agreement it made to pay his airfare and that of Indigenous leader Brad Foster so the pair could accompany the Minister to Palm Island.

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11 Bylined Tony Koch and Cath Hart.

12 According to Mr Picard, a one-way fare had been booked because Mr Yanner had not sought a return flight.

13 <[http://www.abc.net.au/message/news/stories/ms\\_news\\_1268147.htm](http://www.abc.net.au/message/news/stories/ms_news_1268147.htm)>.

He says he and Mr Foster were asked to help out by agreeing to say they would pay the Government back for the airfares.

"I was rung by Bruce Picard and Warren Hoey and told that Beattie wanted us to run this angle and would Bradley and I participate and of course I refused to say," Mr Yanner said.

"They asked me to lie that we agreed to reimburse them but 'here, look, don't worry about it, you don't really have to reimburse us but we just need to hose this out, we need you to help pull us out of a hole, you know we'll really owe you one'."

Mr Yanner says never did anyone suggest he and Mr Foster would have to pay for their own tickets or have to reimburse the Government at a later stage.

... Ms Clark admits her office did book the flights for the pair but insists Mr Yanner and Mr Foster were expected to reimburse the Government.

"Of course I could go into 'he said, she said'," she said.

"I totally refute what he is saying, of course, but I think that as it's been stated it will probably become a legal matter and I perhaps should not be speaking out on it."

Mr Beattie may force Ms Clark to pay for the airfares herself.

... Mr Beattie says he will not sack Ms Clark but taxpayers will not pay for the flights, which were booked by the Government.

"Both of the gentlemen concerned will pay the costs," Mr Beattie said. "If they don't, then the Minister will pay them out of her own pocket."

On **Monday 20 December**, the minister personally reimbursed \$1777.34 to the department to meet the cost of the airfares for Mr Foster and Mr Yanner.

## Scope

As part of its routine assessment process, this matter was considered by the CMC's Management Assessment Committee when it met on the morning of Monday 20 December. The committee considered the allegations in the various media reports over the preceding days, and determined that the matter warranted some level of investigation by the CMC. A short time later, the then CMC Chairperson, Mr Brendan Butler SC, gave the committee a copy of a letter he had received from the Acting Leader of the Opposition, Mr Jeff Seeney MP. The letter was dated 19 December 2004.

Mr Seeney's letter provides the following useful summary of allegations that had appeared in the media to that point:

Allegations have been made that the Minister offered for her office to pay the airfares of Mr Yanner and that, subsequent to that being reported in the media:

- Staff in the Minister's office attempted to coerce Mr Yanner and Carpentaria Land Council CEO, Brad Foster, into lying about the travel arrangements;
- That the Director-General of the Department had been involved in concocting a cover-up strategy; and
- That staff in the Premier's Office had been involved in concocting a cover-up strategy.

## Jurisdiction to investigate

The CMC's ability to take action on any matter is governed by the provisions of the *Crime and Misconduct Act 2001*. Under section 33 of the Act, it is one of the CMC's misconduct functions 'to ensure that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way'. The term 'misconduct' is defined by the Act to mean 'official misconduct'. The expression 'is dealt with' includes both conducting an investigation, and gathering evidence for disciplinary proceedings.<sup>14</sup> This means that where the information involves 'official misconduct' the CMC is able to conduct an investigation.

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14 See dictionary provisions, Schedule 2 of the Act.

What then constitutes ‘official misconduct’?

For a member of parliament, or a departmental officer (including a member of a minister’s staff) 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
- is a breach of the trust placed in the person as a member of parliament or departmental officer; or
- involves a misuse of official information or material.

In addition, the conduct in question, if proved, must also amount to either a criminal offence or a disciplinary breach providing reasonable grounds for the person’s dismissal. If the conduct was not such as to warrant the person’s dismissal it will not constitute official misconduct, but may still attract a disciplinary sanction as part of the normal disciplinary regime applying to public sector employees.

It is at this point that different considerations apply to members of parliament as opposed to departmental officers. Because there is no regime for the removal of a member of parliament for a disciplinary breach, it follows that for the conduct of a member of parliament to constitute official misconduct, the conduct must be capable of amounting to a criminal offence. (The rationale for this is that members of parliament are elected by the people and, short of being convicted of a criminal offence, the ‘dismissal’ of a member of parliament is achieved through the ballot box.)

The CMC has jurisdiction to investigate a matter if there is a reasonable suspicion of official misconduct. The CMC’s capacity to conduct an investigation does not depend on whether or not a criminal offence is suspected to have been committed (although for the reasons stated above, if the information or matter relates to the conduct of a member of parliament alone, anything less than a suspected criminal offence would not be investigated by the CMC).

Finally, for a criminal offence or a charge of official misconduct to be proven, a tribunal of fact must be satisfied to the requisite standard of proof. The criminal standard is proof beyond reasonable doubt. The standard of proof applicable to proceedings for official misconduct is the lesser civil standard of proof on the balance of probabilities. However, it must be recognised that the degree of satisfaction called for may vary according to the gravity of the case<sup>15</sup> — and in the case of proceedings for official misconduct, dismissal is within the range of penalties that could be imposed.

In this matter it was clear from the outset that the minister and/or those in her office took steps to facilitate the travel of Mr Foster and Mr Yanner. As the minister’s press statement to the *Australian* of 16 December 2004 made clear: ‘... we agreed to assist with the airline bookings’.

Logically, the cost of such travel — at least in the initial stages — would have been borne by the minister’s office (that is, from public funds). Beyond that point, however, either there existed an expectation that the cost of such travel was to be reimbursed by Mr Foster and Mr Yanner (or on their behalf by the Carpentaria Land Council) or there did not.

Assuming Mr Foster and Mr Yanner were to assist in facilitating the minister’s visit to Palm Island, no impropriety could attach to the minister’s actions in authorising the payment of their travel costs from public funds. This was so whether or not there existed an expectation that a reimbursement would be sought, or offered. Had there been a misunderstanding in this regard, it would fall to the minister to determine whether to pursue the recovery of the debt.

However, the allegations advanced during the period 17–19 December go beyond a mere misunderstanding. What Mr Yanner was reported to have said amounted to a complaint that the minister (or persons associated with the minister) had attempted to solicit agreement from Mr Foster and Mr Yanner for the publication of a false public

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15 *Bringinshaw v. Bringinshaw* (1938) 60 CLR 336, pp. 368–9.

statement as to the circumstances in which public monies had been expended. Furthermore, it would follow that the press statement issued by the minister was false.

If proven, such conduct would not on its own constitute a criminal offence. (It is not an offence for a member of parliament or anyone else to lie to the media or, through the media, to the public. Nor is it an offence to solicit another to tell such a lie.) However, the community is reasonably entitled to expect that public officers will not be party to the issuing of false statements about the expenditure of public monies — either directly or by the solicitation of others.

Accordingly, the holder of an office in a unit of public administration who is knowingly party to the publication of such a false statement may properly be regarded as having committed an act that might constitute official misconduct.

The matter does not end there. If Mr Yanner's accusation was correct — that it had been hinted to him that he and Mr Foster did not really have to reimburse the airfares — then the wrongdoing is aggravated.

Again, such conduct would not give rise to a criminal offence, but would be capable of constituting official misconduct (other than by the minister). This would not preclude the CMC from examining the minister's conduct where it was relevant to do so as part of a wider investigation.

## THE INTERVIEWS

The CMC examined ABC interviews of Mr Yanner and Mr Foster and conducted its own face-to-face interviews with the following people:

Person	Position	Date
Dr Warren Hoey	Director-General, Department of Aboriginal and Torres Strait Islander Policy	20 December 2004
The Honourable Liddy Clark MP (the minister)	Minister for Aboriginal and Torres Strait Islander Policy	21 December 2004 and 7 February 2005
Mr Bruce Picard	The minister's Senior Policy Adviser	22 December 2004 and 11 February 2005
Ms Marie Low	The minister's Senior Media Adviser	22 December 2004 and 15 February 2005
Mr Steve Keating	Deputy Director of the Government Media Unit, Premier's office	10 January and 2 February 2005
Mr Rob Whiddon	Chief of Staff to the Premier	17 January 2005

Where it was considered appropriate, email requests were made for additional information on non-contentious issues. Similarly, journalists Tony Koch and Cath Hart provided information by email on non-contentious points. (Mr Koch assisted with telephone numbers for Mr Foster and Mr Yanner. Ms Hart outlined the nature of her contact with the minister's office on 16 December.)

Access to relevant documentation was promptly provided upon a request to the Premier's office. The CMC is satisfied that all relevant documents were produced at that time, although some additional documents were later provided by individual witnesses when their relevance became apparent (e.g. telephone records and contemporaneous handwritten notes prepared by individuals during meetings).

## The ABC interviews

Given the public statements made by both Mr Foster and Mr Yanner, and the comments they made directly to the CMC, it became clear that neither was prepared to voluntarily assist in the investigation of the matter.

The CMC first attempted to speak to Mr Yanner by telephone on 22 December. The call was quickly terminated by the CMC investigator when Mr Yanner became abusive.

Further attempts to contact Mr Yanner were made by the Executive Legal Officer with carriage of the investigation. Contact was made with the offices of the Carpentaria Land Council in Mount Isa and Burketown. On 1 February 2005, the legal officer telephoned Mr Yanner's home and left a message with a person believed to be his wife.

By letter of 2 February 2005, the CMC wrote to Mr Yanner at his home address advising that in the absence of any response from him it was proposed to progress the investigation on the basis of the transcript of the interview conducted by ABC journalist Francis Tapim. (Details of the interview are given below.) Beyond the initial telephone call, there was no response from Mr Yanner to any of the CMC's attempts to make contact with him.

Approaches were also made to Mr Foster, both directly, and via Mr Koch. Mr Foster was spoken to by a CMC Indigenous Liaison Officer on a number of occasions, and also by the Executive Legal Officer. Mr Foster ultimately declined to participate in an interview and, as with Mr Yanner, was advised the CMC proposed to rely upon the transcript of the interview he had given to the ABC.

Mr Foster also advised the CMC that Mr Yanner was not prepared to be interviewed.

Furthermore, on 23 December, the *Courier-Mail* had reported Mr Yanner as having 'declared he would not cooperate' with the CMC. The article quoted Mr Yanner as saying, 'I haven't returned their calls. Why should I cooperate with a CMC that hasn't given a stuff about our people.'

An article published by the same newspaper on 11 January 2005 reported that Mr Yanner and Mr Foster had 'refused to cooperate with the CMC inquiry on the basis that the Commission has not demonstrated interest in the past in addressing indigenous issues'.

In the case of both Mr Yanner and Mr Foster, consideration was given to whether the CMC should use its coercive powers to compel their cooperation. For the following reasons, it was determined that such a course was unnecessary.

Firstly, at no stage did it appear that the issues being investigated involved any criminal offence — rather, it was apparent from early in the investigation that, at worst, the evidence was likely to be limited to conduct capable of constituting official misconduct only. Secondly, having regard to the versions of events provided to the CMC by the minister, her staff and others, it had become apparent that there was considerable common ground as far as the publicised allegations were concerned. Finally, with the cooperation of the Australian Broadcasting Corporation, the CMC secured a copy of audio and written records of interviews conducted with Mr Yanner, the minister and others by ABC journalist Francis Tapim.<sup>16</sup> During those interviews, the issues pertinent to the investigation were canvassed, with each person providing an account or version of the relevant facts and events, as well as commenting upon the claims that had been made by others. The accounts Mr Foster and Mr Yanner had provided to Mr Tapim were sufficiently detailed to permit the CMC to conclude its investigation without the need to conduct formal interviews with them.

Accordingly, the CMC informed Mr Foster and Mr Yanner that it would refer to and rely upon the accounts they had given to Mr Tapim. A copy of a transcript of their respective interviews was given to them, and they were invited to contact the CMC should any

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<sup>16</sup> At the ABC's request, the CMC issued a notice to produce (under section 75 of the *Crime and Misconduct Act 2001*).

statement contained in the transcript not accurately reflect their understanding of the events. Neither Mr Yanner nor Mr Foster sought to correct anything contained in the respective transcripts.

The absence of an opportunity to conduct formal interviews with Mr Foster and Mr Yanner means that for some issues there remains a potential for inconsistency. But those issues either do not need to be resolved or are incapable of being resolved. For instance, on the available evidence it is not possible to identify the precise terms of the conversation/s between Mr Picard and Mr Yanner on the evening of 16 December 2004, nor whether Mr Picard spoke by telephone with Mr Foster on the Thursday evening (which is what Mr Foster has alleged), or on the Friday morning (which is what Mr Picard alleges).

A similar confusion arises over whether or not Dr Hoey telephoned Mr Yanner to solicit his participation in the alleged cover-up. (Mr Yanner claims he did; Dr Hoey says he did not.) The CMC considers that it is most unlikely that Dr Hoey made the call — his telephone records do not show that he did, and all those who acknowledge being involved in preparing the press statement deny he played a part. (The issue of Dr Hoey's involvement is examined in greater detail elsewhere in this report.)

The CMC acknowledges that everyone who participated in interviews during the investigation not only did so voluntarily, but also afforded every courtesy to investigators.

The following narrations are based on interviews conducted either by the CMC or, in the case of Mr Yanner and Mr Foster, by Francis Tapim of the ABC. Given that the suggestion of impropriety first came from Mr Yanner, it is appropriate to begin with him.

### **Marrandoo Yanner**

ABC journalist Francis Tapim's interview with Marrandoo Yanner was broadcast on the evening of Friday 17 December 2004, the day of the minister's visit to Palm Island.

The ABC was able to provide the CMC with a full transcript of the interview.<sup>17</sup> It is evident from the transcript that statements made by Mr Yanner during this interview formed the basis of the various press and radio bulletins in which he was quoted.

Mr Yanner was asked whether he and Mr Foster had agreed to accompany the minister on her visit to Palm Island. Mr Yanner explained that he and Mr Foster had met with the minister in Brisbane, and that it had been their 'objective to get her to come and visit and she gracefully did and during that I guess they agreed to pay our way up which has become a bit of a controversy.'

The following excerpts are taken from the ABC transcript:

- Q. A spokesman for Ms Clark says the Minister's office allegedly booked the flights for you and Mr Foster but expected you both to reimburse the Government for the cost of the airfares. Now what's your version of the events?
- A. Not only is that absolute rubbish, the Director-General Warren Hoey, the Minister herself, Liddy Clark, one of her right-hand men, her senior adviser, Bruce Picard, myself, a lady lawyer who works for our people in the Gulf and Mr Foster, were present in that meeting. Just the six of us in the room. And they offered to pay our tickets and we gratefully accepted of course and there was absolutely no mention made of any reimbursement. The mention in that story came later in the night when we received strange phone calls from Liddy's office and from Warren Hoey and Bruce Picard, to say to me that would we participate and conspire in a cover-up or a move to deceive the public at the behest of the Premier's office, because apparently these blokes were packing it. Apparently the Police Union had gone off, because he had been contacted by Wilkinson from the Police Union and said 'Why the hell is Liddy Clark paying for this bloke that we are investigating over his comments to go up on Government money?'

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<sup>17</sup> The ABC informed the CMC that the audio recording had been erased.

So Peter Beattie screamed and his spin doctors have demanded that Liddy's office go along with the story of reimbursement. Now I like and admire Liddy, you know, but I can't be part of no cover-up.

We are trying to expose a cover-up in regards to a murder in custody, the Police Union, the Opposition and the Government is cover this up, throwing dirt on this death, and we are trying to uncover and seek the truth and justice and I can't be a hypocrite and be trying to expose a Queensland Government cover-up here whilst being a part of one there.

So I was rung by Bruce Picard and Warren Hoey and told that Beattie wanted us to run this angle and would Bradley and I participate and of course I refused to say. They asked me to lie and say that we agreed to reimburse them but, 'here look don't worry about it you don't really have to reimburse us ... but we just need to hose this out ... we need you to help pull us out of a hole ... you know we will really owe you one.'

It was around 6 pm, between 6 and 7 in the evening, roughly around that time. They rang me and said that, you know, Beattie's office had been on to Liddy and these blokes calling me, Warren Hoey, who's the Director-General and Bruce Picard is a senior advisor, and he went off and he's saying the Police Union is up in arms and hammering Beattie, his office, over Liddy paying those tickets and Beattie ... him and his spin doctors said to Liddy and her advisers, 'Here is how we get out of it. Make this yarn up about the reimbursement. Yanner and Foster can fix it up and get them to go along with the story and everything will be apples, it will go away. We will hose the Police Union down and we will owe them one.'

Mr Yanner went on to explain that he was later told 'that they had already put out the press release saying that Bradley and I had agreed to reimburse so I felt even more offended that they rang me after they sent out the press release and asked me to go along with this story.'

He also suggested that Mr Foster had been 'called independently of me and asked to do exactly the same thing and he also disagreed and said we can't do that, we can't lie'.

Mr Tapim asked Mr Yanner to comment upon the account that the minister had previously provided, namely, that it had always been understood that the fares were to be reimbursed. Mr Yanner rejected this proposition as 'absolute rubbish'.

Mr Yanner was then played a tape recording of comments made about the matter by the Premier. At the end of the recording Mr Yanner said:

Yeah. I won't be paying no airfare because I never agreed to it and I believe Liddy had the delegation and power to make that offer as a minister. She can certainly sign off of stuff up to \$100 000 let alone \$1000 worth of airfare tickets. But I think here's living proof of what I'm talking about. They're trying to cover up \$1000 worth of airfare tickets. What lengths will they go to cover up a murder in custody?

### **Bradley Foster**

ABC journalist Francis Tapim interviewed Bradley Foster on 22 December 2004.

As with Mr Yanner, no attempt was made to compel Mr Foster's cooperation. Instead, the CMC obtained a videotape recording of the Francis Tapim interview with Mr Foster, and prepared a transcript of the tape. The videotape is undated, but portions of the interview were broadcast on Wednesday 22 December.

The videotape was unedited. It was evidently intended that only select parts of the recording were to be used. Accordingly, in some instances Mr Foster only partly answered a question before requesting the question be posed again. As part of the production process, the camera is refocused upon Mr Tapim at the conclusion of the interview, to enable footage of him speaking. At this point Mr Tapim repeats the various questions previously posed. For some of these 'repeated' questions, Mr Foster volunteered further responses.

The resultant transcript is something of a mishmash, containing partly completed questions and answers. However, taken as a whole, the transcript provides an accurate record of Mr Foster's comprehensive explanations of the pertinent issues.

When asked whether he intended to reimburse the minister for the cost of his air travel, Mr Foster replied that he and Mr Yanner 'were under the impression that Liddy Clark's office was bearing the cost for us to go up to Palm Island to assist her'. Later in the interview, Mr Foster said:

... I'm not going to be involved in any cover up. We're not lying about this. At the end of the day the Minister made the right decision. She tried. She showed true leadership in engaging myself and Murrandoo to travel up to Palm Island to assist her in engaging with the Community Council and also talking to the people of Palm Island.

The following excerpt is taken from the transcript:

- Q. So there is no question whatsoever about who was to pay for the airfares because this is what this is all about ... Miss Clark's office is saying that they only agreed to book the airfares and that you and Murrandoo were to reimburse them for the airfares?
- A. ... From my meeting on that day when we spoke with the Minister and also Warren Hoey who is the D-G, and the senior policy officer, Bruce Picard, we made the decision that the office was ... bearing the cost of actually going up to Palm Island.
- Q. To set the record straight once and for all, did the Government clearly and unequivocally say they were paying for the airfares?
- A. Yes, they did say they were paying for the airfares to go up to Palm Island and the return trip back to Brisbane.
- Q. So there's no question whatsoever about who was paying for these airfares? The Government was saying that they only booked the airfares and that it was always planned that you and Murrandoo were to pay for your own airfares. There were only booking it. Is that your understanding of how it worked?
- A. No, that isn't my understanding. I was told from Bruce that they would now organise the airfares with the secretary. ... There wasn't any misunderstanding at all about who was paying for the fares. ... The Minister, Liddy Clark's office was actually bearing the cost for myself and Murrandoo Yanner to go up to Palm Island to assist in relation to a death in custody within the community.

During the interview, Mr Foster said that on the evening of Thursday 16 December he had received a telephone call from Bruce Picard, who gave the impression 'he wanted me to cover-up the situation with the air tickets'. Mr Foster described the call in the following terms:

... Bruce Picard, who's the senior police adviser within Liddy Clark's office, gave me a call late on Thursday night, asking about the ticket issue and suggesting that, 'Look Brad, we've got some pressure from the Premier's office, and I think it's very important that we're going to have to work out how we start dealing with this properly'. And he then suggested that it's important that we should look at invoicing yourself and Murrandoo on the cost of the tickets. And I said, 'Mate, I'm not going to be involved in any cover up. ...'

Mr Foster said he was very disappointed that the minister had sought to distance herself from him and Murrandoo Yanner when the scandal broke. He stated: 'I think her heart is in the right place ... and I think it's very important that she showed true leadership in actually taking us up into the community'. On several occasions during the interview he made the point that there was 'no reason for myself or Murrandoo Yanner to lie about the ... issue'.

## CMC interviews

### Liddy Clark

The CMC interviewed the Honourable Liddy Clark MP on 21 December 2004 and again on 7 February 2005.

During the initial interview, the minister gave a detailed account of the events that had culminated in her visit to Palm Island. She explained how she had met with Mr Foster and Mr Yanner in her office on the morning of Wednesday 15 December, and how, later in the day, it came about that plans were made for the two men to accompany her when she visited Palm Island at the end of the week.

The minister described the meeting as the third occasion she had met with Mr Foster to discuss issues pertaining to the Carpentaria Land Council, of which Mr Foster is Chief Executive.

The minister said she knew Mr Yanner would be attending the meeting, Mr Foster having told her. The meeting had been scheduled in her diary for some time.

The minister explained that the meeting had been quite long, and she outlined her recollection of the various issues discussed. Her recollection was that the question of Palm Island had arisen at the conclusion of the meeting.

According to the minister, she had indicated she had another pressing engagement to go to. At that point, Mr Foster and Mr Yanner indicated they had wished to discuss issues concerning the state of affairs on Palm Island. The minister informed them that she proposed visiting Palm Island at the end of that week — that is, on Friday 17 December — and went on to explain the reasoning behind the timing of her visit (that is, why she had not visited sooner).

She said that, as everyone was rising to leave her office, and as something of an aside, Mr Foster turned to Mr Yanner and said: 'Should we go?' and Murrandoo said, 'No, I think she'll be fine.' The minister said she responded to the effect, 'No, it's okay, you don't need to come, I'll be fine.'

Later that day, after returning from her meeting with the Education Minister, and while discussing her planned travel to Palm Island with Mr Picard and Ms Low, the minister was informed that Mr Foster had just telephoned her office:

And the upshot of that was that Brad had rung through and said that they felt that Palm was still quite volatile and that they'd be happy to come with me and they, they were suggesting that they should come. ... Both Marie [Low] and Bruce [Picard] said, 'Well, you know, we think this could be good. Why don't we say "yes"?' And I said, 'Okay, okay, I'll say "yes"'. And they said, 'Well, we'll make the bookings.' And I said, 'Fine.'

The minister said that there was no conversation at that point about who was going to pay for the travel: 'we just said, "we'd book the tickets."' She explained that, at that point, the issue of who was going to pay for Mr Foster's and Mr Yanner's air travel did not enter her mind. 'It's normal practice to make bookings, and that's all I felt was happening ... It wasn't an issue in my mind at all.'

She made the point that it is not an unusual thing for her, as minister, to invite people to accompany her on ministerial visits to remote communities. Sometimes, such as in the case of backbench members of parliament, the travel costs are shared, but in the case of Indigenous leaders, media representatives, or people who have a particular concern with the area, no contribution to the cost of travel is sought.

On the following afternoon, the minister was getting ready to travel when she was rung on her mobile by Bruce Picard, who told her: 'The Police Union have found out that Murrandoo's travelling with you. They're not happy.' There then followed a short discussion with Mr Picard regarding the Police Union's concerns. Bruce said:

'That's okay. Look, I'll try and get onto Murrandoo and Brad and suggest that they pay, you know, and we'll do it that way.'

A short time later Mr Picard again telephoned the minister to tell her that Murradoo had said 'Yeah. That's fine.'

And I said, 'Okay', and went to the airport and got on the plane.

As to the issue of payment, the following passage is taken from the transcript of the minister's first interview:

- Q. If that issue hadn't arisen, that is, the concern expressed by the Police Union and your conversation with Bruce about that, would you have expected that your office would have picked up the travel bill in any event?
- A. Yes. I would have. Yeah.
- Q. That was just, had never been spoken about?
- A. No.
- Q. Wasn't an issue as far as you —
- A. No.
- Q. — were concerned? They were coming along?
- A. Absolutely.
- Q. In essence at your invitation?
- A. As leaders. As spokespeople for some of the members of Palm.
- Q. And your conversation you had with Bruce culminated in Bruce suggesting he would suggest to Murradoo Yanner and Brad Foster that perhaps they should pick up the tab?
- A. Yeah. It was never — it wasn't adversarial at all. It was just, look, the, 'You know what the Police Union are like.' I said, 'Yes. It's not good for us.' And he said, 'Look, I'll just put it to Yanner and see what happens.' I said, 'Fine.'

The minister also briefly outlined events that occurred during her visit to Palm Island. This included hosting a media conference for local media representatives where the minister thought the issue of Mr Yanner's travel costs was raised:

I said that, 'Look, that it was my understanding that they'd agree to pay.'  
Because that was the last conversation that I'd had with Bruce.

The minister was then asked whether she had since discussed the matter with Bruce Picard. She replied that she had not discussed the issue with him because 'then it all went pear-shaped', adding that 'experience has told me don't talk to anyone'.

The minister's reply had been made in the context of telephone calls between Mr Picard and Mr Yanner. The following exchange occurred:

- Q. You haven't discussed this issue with Bruce?
- A. No. No, cause then it all went pear-shaped
- Q. Pear-shaped? Okay.
- A. And my last experience has told me don't talk to anyone.

In later interviews with Mr Picard and Ms Low, it emerged that the minister had engaged in apparently extensive conversations with her staff in the days following her return from Palm Island. According to Mr Picard, he and the minister had repeatedly discussed the matter — as recently as the day before the minister's interview with the CMC. (Mr Picard's account is detailed below.)

This apparent inconsistency was put to the minister when she was interviewed on the second occasion. She said:

Again, I certainly didn't mean to mislead you or, or anything like that. I read the transcript of this and what I thought you were asking was 'Were we colluding?', and, certainly not, certainly not. But of course I had discussions at length with Marie and Bruce about the issue about Palm Island, about everything that was going on. But certainly not about, 'Well this is what I'm going to be telling the CMC, what are you going to tell?' Certainly none of that. Because that's my previous experience. You do not collude.

As to whether she had discussed the matter with the Premier, the minister said that, although she had spoken with him on Saturday 18 December, they had only discussed 'personal things', and the question of Mr Foster's and Mr Yanner's air travel had not been raised. The minister said she had viewed 'the tail end of a press conference' in which the Premier had said the taxpayer should not be paying for people like Murrandoo Yanner: 'that if Murrandoo's travelling then the minister should pay for it.'

It was drawn to the minister's attention that one allegation aired was that staff in the Premier's office had been involved in concocting a cover-up strategy. When the minister was asked if she wished to comment upon the allegation, she responded: 'I was not under the impression, I didn't know that Premier's were involved in it anyway.'

### **Bruce Picard**

The CMC interviewed Bruce Picard, the minister's Senior Policy Adviser, on 22 December 2004 and again on 11 February 2005.

Mr Picard told the CMC that he had been present during the minister's 15 December meeting with Mr Foster and Mr Yanner, confirming that the meeting 'had been set down for some time', and had been 'the third meeting in probably three months'.

It was Mr Picard's recollection that the notion of Mr Foster and Mr Yanner accompanying the minister on the visit to Palm Island was not something that had been raised in the course of the meeting proper. Rather, Mr Picard described how, at the end of the meeting (which, according to a file note he prepared on 17 December, had occurred at about 11.25 am), he accompanied the minister to a meeting at the office of the Education Minister. He said that sometime after their return, 'Brad Foster rang the minister's office'. His file note records the events in the following terms:

At about 1 pm Brad Foster rang the Minister's office. I took the call. He offered to go to Palm Island with [Murrandoo Yanner] to make sure the visit went smoothly for the Minister. He again mentioned there were a lot of angry people on the island but their presence might assist in keeping the peace amongst locals because they were well accepted there. I said I would get back to him. I discussed this immediately with the Minister and Marie Low in the Minister's office. In all the circumstances a decision was taken to accept the offer. The Minister's [personal assistant] was called into the room and asked to make the bookings. I then rang Brad Foster back to say we would make the bookings as he had requested.

As to the question of who would be paying the cost of the air travel for Mr Foster and Mr Yanner, Mr Picard told the CMC that he was 'under the impression' the minister's office would have paid: 'That was my recollection, you know, that was my impression.'

Mr Picard acknowledged the possibility that the minister's Senior Media Adviser, Ms Marie Low, might have said something concerning the question of who should meet the payment, but he could not specifically recall the issue being raised during this particular conversation with the minister and Ms Low. He denied that he had discussed the issue with the minister at any point in the conversation.

Certainly, as at the close of business on Wednesday 15 December, it was Mr Picard's belief that the minister's office was paying for everyone to travel to Palm Island. Accordingly, at 4.04 pm that afternoon, Mr Picard, in line with his 'no surprises rule', advised the Premier's office that the minister's office was paying for Mr Foster's and Mr Yanner's travel. He did this by sending an email to Mr Rob Whiddon (the Premier's Chief of Staff).

The email, which speaks for itself, reads as follows:

Ministers Clark and Reynolds are travelling to Palm Island on Friday. There will be considerable media interest. This morning Minister Clark had a long meeting with Murrandoo Yanner and Brad Foster in her office. As it turned out it was a very positive meeting and later in the morning I received a call from Brad Foster volunteering himself and Murrandoo to be on the island with the Minister. They gave an assurance their attendance would be in the interest of keeping the peace and making sure the Minister had a fair hearing. In all the

circumstances, the idea had merit. Going to the island and talking to the Mayor alone had greater risks for the Government than the course we have decided to follow. Given Cabinet's decision on Monday that we needed to start a negotiation process was also part of the reason **this office has agreed to pay their airfare (economy) to Palm Island for the meeting**. The media will be surprised to see the Ministers and the two gentlemen concerned get off the plane together. Minister Reynold's office has been consulted.

(Emphasis added)

Explaining how it was that he came to send the email, Mr Picard said that his purpose was simply to keep the Premier's office informed, and he had 'used the word "paying" because that was my understanding'.

The following passage is an extract from the transcript of the interview with Mr Picard:

- Q. I'm just wondering whether there was some reason you thought you should tell Rob Whiddon on the Wednesday afternoon that your office was paying for the airfares?
- A. The reason is to keep them informed.
- Q. ... For no other reason?
- A. No other reason at all.
- Q. ... I know it's difficult in hindsight, but was it an issue for you that Premier's may balk at your office paying for their airfares, or was this just keeping them informed?
- A. This is keeping them informed. But always I was under the impression we were, as I say — my understanding was we were paying. But obviously I always accepted that we may get advice that we weren't paying for it.

The following day — Thursday 16 December — between 3 and 4 pm, Ms Low walked into Mr Picard's office and 'advised that the media and the Police Union had a story that we were paying the airfares'.

At about the same time Mr Picard received a call from Mr Steve Keating, a media advisor in the Premier's office, who said that the Premier had found out that the minister's office was paying and that he was not happy about it. In his file note of 17 December, Mr Picard recorded that Mr Keating's call made it 'clear that under no circumstances would the public pick up the costs of the airfares'. In the course of his first interview with the CMC, Mr Picard put it this way:

... it was about the same time that Marie Low advised that the media, the Police Union had the story, I had a call from Steve Keating saying that the Boss had just found out that we were paying and he was not happy. **We were to pay. They had to reimburse.**<sup>18</sup>

(Emphasis added)

Mr Picard described how, as a result of the interest taken by the *Australian*, and as a consequence of the direction provided through Mr Keating, Ms Low set about preparing a press statement to be sent on behalf of the minister to the *Australian*.

Ms Low's first attempt at drafting the statement was sent by email to Steve Keating at 5.41 pm. It read, in part:

Because it was short notice we agreed to pick up the airfare costs on the understanding these would be reimbursed at a later date.

Mr Picard conceded that, as worded, the draft statement was not consistent with his belief, namely, that the minister's office was paying for the travel.

As to the statement itself, Mr Picard stated that 'obviously we weren't going to put out a statement like that, unless Yanner would confirm that they'd be reimbursing'.

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<sup>18</sup> Mr Keating denied the suggestion that he had referred to a 'reimbursement'. In the subsequent interview with Mr Picard he conceded that this description of the conversation should not be taken as a verbatim account. Mr Picard also conceded that Mr Keating had not raised the question of reimbursement, but had merely conveyed an instruction that 'the taxpayer was not to pay.'

According to Mr Picard, while Ms Low concerned herself with formulating an appropriate press statement, he attempted to make contact with Mr Foster and Mr Yanner to get their agreement to meet the costs of their travel. He made a number of phone calls and left recorded messages asking that his calls be returned. Eventually, at about 5.55 pm, Mr Yanner telephoned the minister's office and spoke with Mr Picard. Mr Picard later made a file note detailing a verbatim account of the conversation as follows:

**Recollection of my conversation with Murrandoo Yanner at about 5.55 pm on Thursday December 16**

BP: We have a political problem. The Queensland Police Union and The *Australian* have apparently got a story that we agreed to pay for your airfares. We have to respond urgently.

MY: How the fuck did they know? — I didn't tell them.

BP: We are going to have to invoice you anyway. The Premier's office has made it clear that the taxpayer won't be paying. This office can't pay. This issue over airfares could well overshadow what we're trying to do on Palm Island. The positive things.

MY: Yeah. I can see that.

BP: So, you'll agree to pay?

MY: Yeah. We've got a problem.

I then read the statement we were proposing to put out, the last sentence.

MY: That's okay. Go ahead with it. I'll try and get in touch with Brad and tell him. He's staying with family across town.

(Assuming they had travelled in accordance with the reservations made for them, by the time of Mr Yanner's call to Mr Picard 'at about 5.55 pm', both he and Mr Foster would already have arrived in Townsville.)

Mr Picard said that the draft statement read over the telephone to Mr Yanner was the one contained in the final of a series of draft statements Ms Low had emailed to Mr Keating. In other words, what he read to Mr Yanner was the same form of words transmitted to Mr Keating at 5.56 pm, and, a short time later, to the *Australian*.

According to Mr Picard, having obtained Mr Yanner's approval (and Mr Keating's), he or Ms Low telephoned the minister, read the draft press statement over the telephone, and received the minister's go-ahead to issue the statement.

As to his own involvement in the drafting, Mr Picard explained: 'Marie would have run things by me as she was furiously trying to work out ... yes, she would've been keeping me informed.'

Mr Picard agreed he also spoke to Mr Foster — but on the morning of Friday 17 December. At that time, Mr Foster was on Palm Island and was using the minister's mobile phone. According to the file note that Mr Picard prepared the same day:

I spoke to Brad Foster at 8.20 am this morning and told him we would be billing Carpentaria Land Council for his flights. He said he had assumed this office would be picking up the cost. However he agreed this office could issue an account but he may wish to discuss this further next week.

In light of his knowledge of the circumstances in which the arrangements had been made on Wednesday 15 December, it was put to Mr Picard that the press statement Ms Low ultimately sent to the *Australian* on Thursday afternoon was not an accurate account of what had taken place.

Mr Picard conceded the statement was not consistent with his understanding of the arrangement: which was that the minister's office would pay for the additional airfares — subject always, to the possibility that the Premier's office might 'say "No".' The following extract highlights the exchange:

Q. Accepting what you say about how these events transpired, and what you say your belief was at the start: You personally would regard the press release

that went out on the 16th December, in whatever form it was, as being misleading, wouldn't you?

- A. ... It was always my belief that we were paying.
- Q. ...The press release that went out talks about it being borne of the short notice that your office was going to assist in arranging the airline bookings — not that your office was going to pay. So to that extent that media release would not have been consistent with your belief of what had taken place?
- A. No. The short answer is it isn't.

It will be recalled that, on the basis of the version of events described by the minister, it was Mr Picard who raised the possibility that he would ask Mr Foster and Mr Yanner to reimburse the cost of their air tickets. Accordingly, Mr Picard was questioned at length concerning the contact he had with the minister on the afternoon of Thursday 16 December — that is, during the period he and Ms Low were 'furiously working' to prepare a response to the media inquiry.

Mr Picard claimed to have little recollection of what he said to the minister, or her responses, although he conceded: 'I could have advised her that this is the problem we were dealing with. ... I don't recall but I would be very surprised if I didn't advise her [that] this is something we were dealing with'.

In this regard, the CMC questioned Mr Picard as follows:

- Q. What I'm concerned about now is the communication you may have had with the Minister on the Thursday afternoon, after Steve Keating had made it apparent to you that your office was not to pay. I'm concerned about your communications with the Minister at that time, obviously, in the process that led to the creation of these three statements by Marie. Do you have any notes of the contact you had with the Minister on the Thursday afternoon?
- A. No I don't. Because I would have, normal practice would be I would ring her and let her know what had come up and say ... Marie and I will be working out a response. I mean I obviously assist Marie. We're a small office and we'd get back to her.
- Q. This needed more than a response though, didn't it? It needed some sort of strategy to deal with the issue because there was a change being made to the plan, was there not?
- A. What do you mean by that?
- Q. Well you believed at least that your office would be paying for the airfares?
- A. That was my understanding, yes.
- Q. You'd said as much to the Premier's office the day before.
- A. Yes. Absolutely.
- Q. We're now talking about a series of emails late on the afternoon of the Thursday, the next day. It's been made clear that your office was not to pay for the airfares. When and if you spoke with the Minister on the Thursday afternoon it would have been to convey to her the Premier's concern about the payments of the airfares?
- A. I would have said, oh well I don't know what I would have said. But I would have rung her to say, 'This is an issue that's arisen and this is what we're dealing with.'

Furthermore, during his interview with the CMC Mr Picard was invited to comment upon the specific version of events that the minister had previously given to the CMC. He rejected that account. The transcript reads as follows:

- Q. If I suggest this to you, and I want you to comment on it: Did you telephone the Minister on the [Thursday] afternoon while — whether you knew it or not — but whilst she was at the hairdresser's, explaining to her that the Police Union had made an issue of this, and suggesting to her that you had a strategy that you were going to follow; and it was that you were going to contact Murradoo Yanner and suggest that he, and Mr Foster, or the Carpentaria Land Council, pay for the airfares?

- A. No. No. I don't recall doing that at all. I said I would have to try and get in touch with them, because, you know, there was obviously a misunderstanding about who was paying.
- Q. Do you recall in the same conversation with the Minister, the Minister acknowledging that, yes, her office was expected to pay for the airfares?
- A. No. No.
- Q. That is, that her understanding was the same as your understanding?
- A. No. No. No.
- Q. You don't recall ever discussing ...
- A. No. No. Because the Minister is, I've always been led, well she has said publicly that it was always her understanding that we would — it was in the *Townsville Bulletin* — at a meeting she said publicly, it was always her understanding that we would reimburse. That we would pay for the airfares and seek reimbursement.
- Q. Do you recall ever having a conversation with her then, where she's acknowledged to you that your belief was the correct one. That is, that it was always presumed her office would be paying for the airfares?
- A. No. No. I don't recall that. No.

As to whether the minister had been informed of Mr Yanner's response to the notion that an invoice was to be issued seeking reimbursement, Mr Picard was asked:

- Q. Did you at any stage on the Thursday evening — after you had that conversation with Murradoo Yanner — contact the Minister and inform her that you'd had that conversation?
- A. She would have been told at the time that she approved the statement of this conversation that I had with Murradoo, yes.
- Q. Did you do that? Did you convey that information to her?
- A. Either Marie or I. Because I mean that was the basis of the statement that was going out.

Later in the interview, when questioned as to whether he had discussed the matter with the minister more recently, Mr Picard gave the following answers:

- Q. When did you last discuss this matter — these issues — with the Minister?
- A. Oh, Friday. Saturday. Yeah there were several. I spoke to her probably three or four times on Saturday about it. She was in the office on — I'd have to have a look at her diary — but she was in the office on Monday. She wasn't there long. What's today? Wednesday. I haven't discussed it with her today but I discussed it with her yesterday, by telephone. Look, of course I've discussed it with her. It's a pretty big issue.
- Q. No one is criticising you for doing that. I just wanted to know how recently you'd discussed it with her.
- A. As recently as yesterday.
- Q. Have you, during those discussions — that is, post-Friday if you like — asked her what her belief was so far as the payment of the airfares was concerned? That is, her initial belief?
- A. Yes I did. Yes I did.
- Q. And what has she told you?
- A. Oh I just wanted to confirm, I've mentioned, I said, 'You said at a press conference on Thursday — is that it? And she said, 'Yes.' I said, 'This seems to be an issue, obviously.' And I said, 'Look, you're quoted in the thing. Is that your belief?' She said, 'Yes.'

Later, Mr Picard again confirmed:

I did ask her in conversation over the last two or three days, 'Was this your belief?' And she said, 'Yes'.

## Marie Low

The CMC interviewed Marie Low, the minister's Senior Media Adviser, on 22 December 2004 and again on 15 February 2005.

Ms Low acknowledged that she had been party to the discussion that had led to arrangements being made for Mr Foster and Mr Yanner to accompany the minister on the visit to Palm Island on Friday 17 December. She also confirmed that she herself had travelled with the minister.

According to Ms Low, the possibility of the minister travelling to Palm Island was something that had been considered for some time 'and we were playing it pretty much on a day-by-day basis'. By Monday 13 December, it had been decided that the minister's visit would take place on Friday 17 December.

Ms Low said she was not present for the minister's meeting with Mr Foster and Mr Yanner on the morning of Wednesday 15 December. However, she had been aware that there was to be such a meeting because she had heard it mentioned, and she had seen Mr Foster and Mr Yanner in the building.

She said it was sometime later on that day that the possibility of Mr Foster and Mr Yanner accompanying the minister to Palm Island was discussed. Ms Low was in the minister's office when: 'If I remember correctly, Bruce Picard came in and said that they had made the offer to come with the minister'. Ms Low explained that 'we thought that it wasn't a bad idea because they were both Indigenous spokespeople for the Island'.

Ms Low said it was her recollection that in the ensuing discussion: 'the question of payment came up and I expressed some reservations about the payment'. She said that the matter was talked through and it was 'thought it was normal practice' for the costs to be met.

Asked what she recalled of the discussion, Ms Low thought that 'Bruce might have said, "Should we pay for them?"' She added that 'I know I indicated that I had some doubt about that'.

Discussion of the pros and cons of the situation lasted for 'five, ten minutes—something like that', and culminated in the minister's personal assistant being tasked with booking the airfares for Mr Foster and Mr Yanner. Ms Low said she was certain 'we did have a discussion about it and that was the end result'.

As to the ultimate decision on who was to pay, Ms Low recalled that 'it was my understanding that we were to pay for them, but it hadn't been bedded down, and generally these things go to Premier's'. (In other words, like Mr Picard, Ms Low recognised that the Premier's office might 'veto' the travel plans.)

Ms Low told the CMC that she could not recall the minister's involvement in this discussion. She pointed out that the minister 'was there for that conversation and [her personal assistant] was popping in and out'.

Ms Low said comments made by the minister to the effect that reimbursement was always to be sought, suggested that 'there was obvious confusion as to who was paying for what'. She observed that the minister had made comments to her that were consistent with the minister's public statements on the issue, demonstrating that the minister was confused 'about the airfare thing'.

As to the events of the afternoon of Thursday 16 December, Ms Low recalled that she had received a telephone call 'to alert me to the fact that the Police Union were looking at making statements about us taking Mr Yanner and Mr Foster to Palm Island and that they were very unhappy with that'. She was also 'alerted to the fact that this had been passed on or was being passed on to Premier's Department'.

Ms Low also understood that the Premier's office had called Mr Picard 'to say that they did not think this was a good idea ... for us to make the payments'.

Having been alerted to the fact that a journalist was making inquiries about the matter and recognising that ‘there was an issue with the payment and we needed to clarify it’, Ms Low thought it wise to prepare a press statement for the minister.

(The journalist concerned, Ms Cath Hart, advised the CMC that she had not contacted the minister or Ms Low directly, but rather, had sought comment from the Police Minister. She said she was later contacted by Ms Low, who requested that she not complete her article before considering a response from Minister Clark. When interviewed by the CMC, Ms Low could not recall speaking directly to Cath Hart about the matter. Having regard to the evidence generally, nothing turns on this difference in recollection.)

Although unsure as to the precise order of events, Ms Low recalled that she prepared a draft press statement. Mr Picard later contacted the minister by telephone, read the draft to her, and ‘advised me that she was fine with it’. In addition, Ms Low ‘checked it [the draft] through with Premier’s — they were fine with it’.

Ms Low was at pains to make clear that ‘we weren’t going anywhere with the lines until we’d contacted Mr Yanner or Mr Foster to check that we were all of the same mind on it’. She described how Bruce Picard ‘busied himself’ in attempting to contact either Mr Foster or Mr Yanner to clarify who would be paying. Ms Low explained that she wanted ‘agreement on the statement before it went anywhere and we knew who was paying for it’.

Eventually, Mr Picard had succeeded in speaking by telephone with Mr Yanner. Ms Low was present — ‘just at the end of his conversation’ — and confirmed that she had handed Mr Picard the (final) draft of the press statement — ‘so that he could check it with Mr Yanner’. She said she heard Mr Picard read the statement, and also heard Mr Picard ask — ‘something like, “So you agree you’ll pay for the ticket?”’.

When the call to Mr Yanner ended, Mr Picard — ‘got off the phone and he said, “Mr Yanner will pay and he’s contacting Mr Foster”’ Ms Low said that she then specifically asked Mr Picard whether Mr Yanner had agreed to pay the airfares, and was told that he had.

At 6.03 pm, Ms Low emailed the approved press statement to Ms Hart at the *Australian*, and handed a copy of the statement to the minister as they were en route to Brisbane Airport. She said that the minister ‘made no comment about it’.

As to the how the final statement was drafted, and ultimately settled, Ms Low indicated — ‘we had several discussions with Premier’s about the wording of it’. Ms Low acknowledged having sent a series of three emails to Mr Keating and, although stating she could not clearly remember what had been the response, she acknowledged — ‘we had some direction from Premier’s with the wording of this one’.

The flow of emails from Ms Low to Mr Keating reveals a sequence of changes to the final paragraph of the planned press statement. All parties concerned agreed that the emails were accompanied by telephone calls in which the content of the proposed press statement was discussed.

The first email, which was sent at 5.41 pm, sets out a draft press statement in the following terms:

We are trying to listen [to] and meet the concerns of people on Palm Island.

Murrandoo Yanner and Brad Foster have been two of the leading spokespeople for the Palm Island community. They made the offer to assist in restoring peace and calm on the island following a long and constructive meeting with the Minister for Aboriginal and Torres Strait Islander Policy Minister [*sic.*] in Brisbane yesterday.

Because it was short notice, **we agreed to pick up the airfare costs on the understanding these would be reimbursed at a later date.** They have met their own accommodation costs in Townsville.

(Emphasis added)

The second of the three emails was transmitted at 5.54 pm, and reveals that the final paragraph had been amended to read as follows:

Because it was short notice, **we agreed to arrange the airfares on the understanding these would be reimbursed at a later date.** They have met their own accommodation costs in Townsville.

(Emphasis added)

The final in the series of email messages, sent at 5.56 pm, had amended the final paragraph in the following way:

Because it was short notice, **we agreed to assist with the airline bookings on the understanding that they would pick up the cost.** They have met their own accommodation costs in Townsville.

(Emphasis added)

For completeness, the press statement ultimately sent to the *Australian* read as follows:

We are trying to listen [to] and meet the concerns of the people of Palm Island.

Murradoo Yanner and Brad Foster have been two of the leading spokespeople for the Palm Island community. They made the offer to assist in restoring peace and calm on the island following a long and constructive meeting with the Minister for Aboriginal and Torres Strait Islander Policy Minister [*sic.*] in Brisbane yesterday.

**Because it was short notice, we agreed to assist with the airline bookings on the understanding that they would pick up the cost.** They have met their own accommodation costs in Townsville.

(Emphasis added)

The effect of the changes in the various drafts is self-evident.

What is equally apparent, however, is that a grammatical error in the first line and an obvious typographical error<sup>19</sup> in the second paragraph of the first draft went uncorrected in the second and third emails, as well as in the press statement ultimately dispatched to the journalist. This provides a basis to infer that the interest of Ms Low, Mr Picard and Mr Keating was focused on the content of the final paragraph — that is, deciding how best to deal with the issue of the cost of the air tickets.

Ms Low was given the opportunity to comment upon the accuracy of the final paragraph. The following passage is taken from the transcript of Ms Low's interview with the CMC:

- Q. Relevantly, in the last paragraph, the reference goes from 'we agree to pick up the air fare costs on the understanding these would be reimbursed later', to 'we agreed to arrange the air fares on the understanding', to 'we agreed to assist with airline bookings on the understanding they would pick up the cost.' ... Can I get you to tell me whether or not you thought these, or that paragraph in particular, accurately stated what had in fact taken place?
- A. Okay. Now I believe the reason we changed this one was because it was just informal wording. 'We agree to pick up the airfare cost,' wasn't particularly well written. 'We agreed to pick up the airfares on the understanding these would be reimbursed at a later date,' which we later changed to, 'We agreed to assist with the airline bookings on the understanding that they would pick up the cost.' Now this was following some discussions with Premier's that we changed that wording slightly. We did agree to pick up the cost. It was not at the time of the bookings. I don't know what discussion has gone on with Brad and Murradoo prior to that — so I don't know what their understanding of it was. There was obviously some confusion about who was going to pay for it.
- Q. Just from your point of view as an individual, when you left that meeting with the Minister and Bruce Picard on the Wednesday, was it or was it not your understanding that this office would be paying?
- A. It was my understanding that we would pay.

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<sup>19</sup> The preposition 'to' is missing from the expression 'to listen to' in the first line and the word 'Minister' is unnecessarily repeated in the second paragraph.

- Q. Subject, of course, always to the overriding consideration that the Premier's office might not agree to it?
- A. Yes.
- Q. Okay. But it was pretty much understood you would be paying?
- A. That was my understanding of it, yes.
- Q. What happened on the Thursday, if anything in particular, to change that?
- A. Well we had a message from Premier's that we shouldn't be meeting the cost of the airfares.

Despite believing that Mr Picard had the same understanding as herself (that the costs associated with the air travel were to be met by the minister's office), Ms Low rejected the proposition that the statement sent to the *Australian* had been misleading. She conceded, 'if anything there may be unfortunate wording'.

Ms Low also suggested that the interest of the *Australian* had been principally with whether or not Mr Yanner was accompanying the minister. The question of who paid for the airfares did not appear to have been 'their most significant issue'. She asserted that 'whether or not we paid for it, we made the travel arrangements and I can't see that there's any problem with that'.

Finally, on the issue of whether she had any subsequent conversations with the minister concerning the matter, Ms Low said the minister did 'the following day say to me that ... it had never been her understanding that we would pick up the airfares'. Ms Low said she could not remember the precise words used, but she recalled the minister had said something to the effect of: 'I always thought they would reimburse the costs.' She added that they 'didn't get into any discussion about the cost of the airfares or anything along those lines'.

### **Staff of the Premier's office**

As revealed above, at 4.04 pm on Wednesday 15 December, Mr Picard emailed the Premier's Chief of Staff, Mr Rob Whiddon, to announce the minister's plans to visit Palm Island. Mr Steve Keating, Deputy Director of the Government Media Unit, received an electronic carbon copy.<sup>20</sup>

Mr Picard's email (see page 6 for the full text) brought to the attention of the Premier's staff, albeit obliquely, the fact that the minister's office had agreed to pay Mr Yanner's and Mr Foster's economy airfares to Palm Island.

At some point it became apparent that the media was taking an interest in the plan to have Mr Foster and Mr Yanner accompany the minister on her visit to Palm Island. The CMC has not attempted to identify precisely when or how the media interest was sparked, but by late afternoon on Thursday 16 December, advisers from both the minister's office and the Premier's office had embarked upon the process of preparing a press statement for the minister to send to the *Australian*. It was this process that produced the series of three emails transmitted by Ms Low (in the minister's office) to Mr Keating (in the Premier's office).

As demonstrated above, the effect of the changes (and the failure to correct two errors) in the draft press statements is self-evident.

In addition, after Mr Picard had spoken by telephone to Mr Yanner late in the afternoon, he produced a file note of the conversation. Among other things, the file note records that Mr Picard told Mr Yanner:

We are going to have to invoice you anyway. The Premier's office has made it clear that the taxpayer won't be paying. This office can't pay.

<sup>20</sup> The CMC was given details of two further emails sent by Mr Picard to Mr Whiddon (with, in each case, a copy to Mr Keating). Neither message referred to the issue of Messrs Yanner and Foster accompanying the minister, nor to the cost of associated travel.

These words alone may have fuelled Mr Yanner's suspicion that a 'cover-up' was being orchestrated by the Premier — or at least by staff in the Premier's office. What then, was the role played by those in the Premier's office?

### **Rob Widdon**

The CMC interviewed Mr Rob Whiddon, Chief of Staff to the Premier of Queensland, on 17 January 2005.

(Mr Whiddon had earlier assisted the investigation by ensuring a copy of all relevant documentation held within the Premier's office was made available to the CMC. That documentation included the series of emails from Ms Low to Mr Keating, referred to earlier.)

When questioned as to the extent of his knowledge of the events leading up to the minister's visit to Palm Island, Mr Whiddon confirmed he had received Mr Picard's email of Wednesday 15 December, which referred to the minister's plans to have Mr Foster and Mr Yanner accompany her to Palm Island. Soon after, he had discussed the matter with Mr Keating.

According to Mr Whiddon, both he and Mr Keating 'had an immediate reaction to the document. ... I did say to Steve Keating, and he probably said to me almost at the same time, you know, "We can't allow this to proceed."'

Mr Whiddon said he decided to take no action on the matter until he was able to speak directly to the Premier. That proved not to be possible until the next day. He offered two reasons for waiting:

... firstly, the email didn't seek our advice as I would have hoped the Minister's office would have done ... it was a fait accompli; and secondly, because of the issues with the CMC and Minister previously, I felt it best to discuss it further with the Premier before we tried to remedy it.

According to Mr Whiddon, when the opportunity arose on Thursday 16 December for him to discuss the matter with the Premier, he made known his concerns about the minister's decision. He said that the Premier: 'agreed with me, and with Steve Keating and with other members of the staff who had become aware of this, that the Government wouldn't, and shouldn't, be paying these airfares'.

Mr Whiddon said that although the minister might have considered it to be 'helpful to the settling down of Palm Island that Mr Yanner and his friend be in attendance', he didn't accept that argument, and nor did the Premier.

Having discussed the issue, the Premier made it very clear to Mr Whiddon that the Government was not to pay for Mr Yanner's airfare:

... the instruction simply was: 'the Government is not going to meet those costs.' ... It was probably said a little more bluntly than that — but I can assure you it was direct, clear, and there was no doubt. ... I think any reasonable person would have taken the same decision.

In light of the Premier's position on the matter, Mr Whiddon then left it to Mr Keating to liaise with the minister's office:

... Steve Keating was with the Premier. We were clear that the Government wasn't going to pay. Obviously Steve knew that if he ran into difficulties in that regard he could talk to me and I'd take whatever action was necessary. But we determined a course of action and it was followed. There was no need for me to be second guessing it all, following it up. ... It just confused things.

Mr Whiddon said he had understood that the planned air travel related only to the Townsville–Palm Island leg of the journey. He said he had been 'very surprised' to learn some time later that the travel also included the Brisbane–Townsville leg, and made the point that 'it only compounded the problem actually'.

According to Mr Whiddon, it was possible that it had been Mr Keating who had suggested the travel plans related only to the Townsville–Palm Island leg. Mr Whiddon explained:

... it may be that he [Keating] had made the assumption and then passed the assumption to me. I wouldn't have thought it necessarily — certainly knowing Mr Yanner's propensity to travel — that he wouldn't have shot back after a meeting in Brisbane on Wednesday rather than stick around.

In any event, Mr Whiddon explained that although he had no first-hand knowledge of Mr Keating's dealings with the minister's staff, he would have been kept informed by Mr Keating: 'I mean generally he would come and see me once they were back in the office and just report on how things were going'.

As to the series of three emails sent by Ms Low to Mr Keating, Mr Whiddon could not recall whether he had seen the documents prior to sending the copy of them to the CMC. He explained that Mr Keating:

let me know that he was on top of the situation and was communicating generally with Marie Low, and I think also with Bruce Picard, and that was all I really needed to know.

Questioned about what he could say, if anything, as to the accuracy of the press statement ultimately sent to the *Australian*, Mr Whiddon said he doubted he could say 'anything authoritatively' because he had not personally dealt with the minister's office on the matter. In this regard, Mr Whiddon said:

... all I wanted to ensure was that at the end of the day, hopefully at the end of Thursday or Friday, this matter would have gone away and certainly that whatever the situation the Government was not left with the bill. So certainly Steve Keating did inform me at some stage, could be on a couple of occasions, that Picard had told him that they'd been in touch with Yanner and Foster and that the matter was sorted out. That's all I really needed to know.

Mr Whiddon was adamant that at no stage did Mr Keating suggest that anything misleading was about to be sent to the media. In Mr Whiddon's opinion, Mr Keating:

... is honest to a fault, if there is such a thing, and he would never say to me, 'By the way, you know, we've got to fix this, you know, here's the fix, it's misleading,' I mean, that's not the man.

Additionally, as to the Premier's involvement in the matter, Mr Whiddon said that as far as he was aware, beyond giving the very clear instruction, the Premier's role was limited to discussions with Mr Keating as they travelled together in the government car.

### **Steve Keating**

The CMC interviewed Steve Keating, Deputy Director of the Government Media Unit, on 10 January and again on 2 February 2005. Mr Keating answers to the Premier's Chief of Staff, Mr Whiddon.

As evidenced by the series of three emails of Thursday 16 December 2004, Mr Keating was party to the preparation of the statement sent to the *Australian* late on the afternoon of 16 December.

At 4.04 pm the previous day, Wednesday 15 December, Mr Picard had sent an email to both Mr Whiddon and Mr Keating, informing them not only that the minister was planning to visit Palm Island, but that Mr Foster and Mr Yanner had 'volunteered' to accompany her, and that 'this office has agreed to pay their airfare to Palm Island for the meeting'.

As to the suggestion that Mr Foster and Mr Yanner might accompany the minister, Mr Keating said it had been his understanding 'we were only talking about travel from Townsville to Palm Island'. He explained: 'that was an understanding I had developed ... it hadn't been explained to me ... that was what I had just assumed'.

The fact that the travel plans also involved the Brisbane–Townsville leg of the journey did not become obvious to Mr Keating 'until Thursday afternoon, when I had discussions with Bruce Picard ... and Marie Low and then there were the exchanges of emails'. Mr Keating told the CMC that he did not seek to clarify the details of the travel with Mr Picard, as he assumed the arrangements (mentioned in the email) were 'just tentative'.

Explaining the basis of his understanding of the travel plans, Mr Keating said he initially did not know that the two men were in Brisbane (although it should be noted that the email refers to the fact they had that same day attended a meeting with the minister 'in her office').<sup>21</sup>

He explained that his 'initial reaction on the whole visit was that it didn't sound a very wise thing to be doing', but he recognised there were reasons the minister's office might have thought that the minister would be assisted by the presence of Mr Yanner and Mr Foster.

Mr Keating acknowledged that on Thursday 16 December he received the series of three emails from Ms Low, the content of which was ultimately transformed into the press statement sent to the *Australian*. He explained he had been party to 'discussions over the phone' with Ms Low and Mr Picard, and that there had been 'certainly a couple of changes made at my request'.

In this regard, Mr Keating explained that he had received 'some very clear riding instructions from the Premier that were absolutely crystal clear'. The 'very clear riding instructions' were identified by Mr Keating in the following terms:

The people of Queensland were not paying for his trip. ... It was absolutely crystal clear and then [the Premier] virtually re-stated that on the Friday morning on 4BC. But there was no dispute as to what he said — 'The people of Queensland are not paying; if need be Liddy will pay for it.' But he said, 'The people of Queensland are not paying for that trip'.

As to the response when the instruction was conveyed to the minister's staff, Mr Keating said:

I'm pretty sure I was talking to Bruce and Bruce said ... 'It'll be sorted.' ... He said, 'This will be okay.' And to my great relief at, approaching six o'clock, he's come back into this conversation with Marie [Low] and I and he's said, 'I've spoken to Yanner. It's okay.'

Mr Keating was asked to respond to Mr Picard's statement that he (Keating) had telephoned Picard to advise him that the Premier was not happy, the minister's office was to pay, and Mr Foster and Mr Yanner would have to reimburse the minister's office. (This implied that the issue of reimbursement had been raised by Mr Keating.) Mr Keating said it was his recollection that the issue of reimbursement came from Bruce Picard.

Mr Keating said that, while he was speaking to Ms Low concerning the form of the final of the three emails, Mr Picard managed to contact Mr Yanner by telephone, advised Mr Yanner of the content of the email, and obtained Mr Yanner's concurrence as to the proposed wording. He explained:

It was quite incredible because we had developed these lines around what was firstly, right, and secondly, in case there was an issue where he said 'no'. But Bruce came back to us and said, 'I've just spoken to him. He said, 'it's okay'. And then it was game, set and match, it's all out.

As a result of what Mr Picard told him, Mr Keating believed the Carpentaria Land Council was to pick up the cost of the air travel. Furthermore, Mr Keating considered that this outcome satisfied the Premier's instruction.

It was explained to Mr Keating that despite the impression given in the final paragraph of each of the three emails, it had been understood by both Mr Picard and Ms Low that everyone's expectation had (initially) been that the minister's office was paying for the air travel of Mr Foster and Mr Yanner. He was asked to comment on the possibility that the suggestion of a reimbursement of those costs was something that had only arisen during the course of the Thursday afternoon.

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<sup>21</sup> Mr Whiddon also said he had acted under the same misapprehension — although he thought that notion may have been something raised by Mr Keating.

In response, Mr Keating acknowledged that 'that could be the case', but pointed out that he had not been privy to the initial arrangements. He said that such an arrangement:

wasn't clear to me at the start but that once I became involved, the instructions I had been given ... that was what was sought. ... I just know what I had sought by about six o'clock, and Picard had spoken to Yanner, and he said it was 'okay'.

Mr Keating said it simply had not occurred to him that the statement might be misleading — it having 'not crossed his mind' that the statement was inconsistent with the email sent to him by Mr Picard the previous afternoon.

On one view of the evidence the inference might be drawn that Mr Keating ought to have appreciated there was inconsistency between, on the one hand, the statement to the *Australian*, which asserted it had always been understood that reimbursement of the airfares would be sought, and, on the other, the email received by him the previous day, which made no mention of reimbursement.

Mr Keating was given the opportunity to comment on this proposition during the course of his second interview. The following extract is from the transcript of the second interview:

- Q. Did it occur to you at any time on 16 December that potentially there was an inconsistency between what was contained in that first sentence of the last paragraph and the information that had been given to you the day before?
- A. It didn't occur to me at the time. It might now. It didn't. It might seem obvious now but at the time no. It was just one issue among many that we were dealing with through the day and it ... didn't occur to me at the time, bearing in mind, as I said, my thoughts were that it was a flight from Townsville to Palm Island.

Asked about how he might have reacted had he considered the statement to be misleading, Mr Keating said that he 'wouldn't have done something that was not right', adding later, '... you just don't do that. That's when you get into strife in this business'.

### **Warren Hoey**

The CMC interviewed Dr Warren Hoey, Director-General of the Department of Aboriginal and Torres Strait Islander Policy, 20 December 2004. Dr Hoey was the first person interviewed as part of the investigation.

Mr Yanner had alleged that Dr Hoey was one of the people (the other being Mr Picard) who sought to have him and Mr Foster promote a cover up.

At the outset of the interview, Dr Hoey gave a comprehensive account of his knowledge of a series of meetings conducted by the minister with Mr Foster, culminating in the meeting in the minister's office on Wednesday 15 December 2004.

Dr Hoey explained that, although about ten minutes late in arriving at the minister's office, he was present for the duration of the meeting, and had made some contemporaneous handwritten notes as the discussion ensued.

He recalled that the subject of Palm Island was touched upon during the meeting: firstly, in the context of the coronial inquiry into Mr Doomadgee's death and the fact that Mr Doomadgee's family was seeking financial assistance to fund legal representation; and secondly, when the minister told Mr Foster and Mr Yanner that she planned to visit Palm Island later that week.

According to Dr Hoey, these issues were raised towards the very end of the meeting, when it was starting to break up and when the minister was under pressure to attend a meeting with the Education Minister.

Dr Hoey remembers taking Mr Foster aside at this point and speaking briefly to him about a number of additional issues he knew were of interest to Mr Foster, including a matter in which Dr Hoey was assisting Mr Foster to make representations to the

Department of Primary Industries. After Mr Foster and Mr Yanner had departed, Dr Hoey made some inquiries about that matter, and a short time later telephoned Mr Foster to pass on some additional guidance.

According to Dr Hoey this was the total extent of his contact with Mr Foster and Mr Yanner that day. Furthermore, he said he had absolutely no contact with either Mr Foster or Mr Yanner concerning any arrangement for them to accompany the minister on her visit to Palm Island.

Further, Dr Hoey's telephone records<sup>22</sup> provide no support for Mr Yanner's allegation that both Mr Picard *and* Dr Hoey telephoned him to promote a cover-up of the travel arrangements.

As to the minister's planned visit to Palm Island, there is no evidence that either Dr Hoey or his office played any part in the making of any travel arrangements.

Dr Hoey explained that he learned of the plan to have Mr Foster and Mr Yanner accompany the minister when, sometime late on the next day (i.e. Thursday 16 December) he received a telephone call from his Deputy Director-General, informing him there had been 'a bit of controversy with the Premier's office and the Police Union'. Dr Hoey said that he asked whether there was anything he needed to do, and was told there was not.

It was only the next day, when he received an email from journalist Tony Koch (seeking his response to a number of questions about the episode), that Dr Hoey understood the full extent of what had apparently occurred the previous afternoon.

Dr Hoey was asked what understanding he had had of the plans to have Mr Foster and Mr Yanner accompany the minister to Palm Island. He replied:

I had no understanding at all because I wasn't involved in the making or planning. I mean given events earlier in the Minister's life about getting the Premier's approval for travel, others travelling, I mean the Premier's very scrupulous about this. The Minister's office had been through a couple of hot spots where they've been late in getting approval. They were very attuned to this sort of thing. So when it came out — in fact, you know, I was really surprised Friday afternoon when I got that thing from Tony, Tony Koch, about the extent to which it had gone, because I'd been getting some, some feedback during the day from Marie Low that the visit to Palm Island was going well.

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22 At the CMC's request, Dr Hoey provided a copy of telephone call records for landline and mobile phones used by him, his Executive Officer and Principal Policy Officer.

## ANALYSIS OF THE ISSUES

### Issue 1

#### **Was the press statement sent by the minister's office to the *Australian* on the evening of Thursday 16 December 2004 false or otherwise misleading?**

When the available evidence is viewed objectively, it is impossible to conclude otherwise than that the final paragraph of the statement was false. The paragraph reads:

Because it was short notice, **we agreed to assist with the airline bookings on the understanding that they would pick up the cost.** They have met their own accommodation costs in Townsville.

(Emphasis added)

This statement, as with the earlier versions of it, implies that the cost of the airfares, booked by the minister's office, would be met by Mr Foster and Mr Yanner or, on their behalf, by the Carpentaria Land Council. Yet, according to the minister, Mr Picard, Ms Low, Mr Yanner and Mr Foster, there had been no such understanding — until, that is, interest in the matter was taken by the *Australian*.

### Issue 2

#### **In what circumstances was the press statement prepared and made public?**

When the press statement was emailed to the *Australian* it was, in effect, released to the community at large. Its content was also communicated to the Premier — presumably, either by Mr Keating, or through articles appearing in the next day's press.

Having established that the press statement as written was false, the next issue was whether disciplinary or other action ought to be taken against those involved in its production, all of whom were holders of appointments in a unit of public administration.

To this end, it must first be determined how the false press statement came to be produced. Was it, for instance, part of a deliberate and calculated attempt to mislead, or was it created as a result of recklessness, inadvertence, or, perhaps, for some other entirely innocent reason? In other words, the task is to identify the degree of blame attaching to those who were involved in its creation, so consideration might be given to whether disciplinary action is warranted.

The emails sent by Ms Low to Mr Keating provide some evidence of a deliberate attempt to present the facts in the most favourable light to the minister. The fact that the only alterations made were to the first sentence of the last paragraph (overlooking a grammatical error and an obvious misprint) suggests that the attention of those involved in the preparation of the statement was primarily on explaining away the issue of payment. This suggests that the words used were considered and not chosen through mere inadvertence or oversight.

On the other hand, there is little practical difference between the wording of the first draft and the final statement, the falsity in the final version being no greater than that in the first draft. This implies that those working on the drafts were interested merely in how best to wordsmith the statement.

The circumstances prevailing at the time the press statement was being created are also important to bear in mind. In this regard:

- the issue in question carried potentially serious adverse political repercussions for the minister and the Government
- the Premier had issued an explicit edict forbidding the use of public funds for this purpose
- the expenditure had already been incurred, such that it was impossible to satisfy the Premier's specific edict
- it was late in the day, and approaching the journalist's 'deadline'.

It is then not surprising that those directly involved in the statement's creation (Mr Picard, Ms Low and Mr Keating) all pointed to the fact that they were operating under considerable pressure. Mr Picard made the following observation:

... I'd really like to make this point. You've got to understand the atmosphere we were working in. ... If you were investigating a ship wreck, you'd take into account the sea conditions at the time, you know. This is a highly charged political atmosphere ...

Nonetheless, such issues are bound to confront ministerial advisers from time to time. That much 'goes with the territory' of working within a highly charged political environment. Ministers doubtless select their advisers for their ability to perform under pressure. Furthermore, while the fact that someone is working under pressure might explain a wrong decision or questionable judgment, it does not always excuse it.

Who, then, was responsible for creating the press statement; what role did they play in its preparation; and what was their intention?

Having investigated the issue, it is now clear that — contrary to what the press statement says — the notion of reimbursement had not been part of the initial travel arrangements. How then was the notion of reimbursement raised?

The explanations are disparate and confusing.

According to the minister, the issue of reimbursement was raised by Bruce Picard who, having telephoned the minister to alert her to the interest of the Police Union, suggested he would 'try and get onto Murradoo and Brad and suggest that they pay ... and we'll do it that way'.

(It is significant, too, that the minister claimed she 'didn't know that Premier's were involved in it in anyway'.)

Mr Picard, however, is at odds with the minister. While acknowledging having said to the minister that he 'would have to try and get in touch with them, because ... there was obviously a misunderstanding about who was paying', he specifically denied the minister's accusation that he had suggested the 'strategy' to anticipate the Police Union's criticisms.

On the minister's account to the CMC, there was no such misunderstanding. (In this respect the minister, Mr Picard and Ms Low are in agreement — that is, they all were under the impression that the minister's office was paying the airfares — although it is possible her public comments on and after 17 December have caused difficulty for Mr Picard and Ms Low in reconciling their own beliefs with what the minister then publicly asserted as her own state of mind.)

In his first interview with the CMC, Mr Picard described how he:

had a call from Steve Keating saying that the Boss had just found out that we were paying and he was not happy. **We had to pay. They had to reimburse.**

(Emphasis added)

This suggests that the notion of reimbursement came from the Premier's office. It is a proposition that is not accepted by Mr Keating (and was resiled from by Mr Picard in his second interview).

According to Mr Keating:

the riding instructions were clear from the Premier, and they [Bruce Picard and Marie Low] said they would sort it out.

Mr Keating explained:

I'm pretty sure I was speaking to Bruce and ... he said, 'It'll be sorted.' He said, 'This will be okay.' And to my great relief at, approaching six o'clock, he's come back into this conversation with Marie and I and he's said, 'I've spoken to Yanner. It's okay.'

Mr Keating's position appears consistent both with what the minister had to say about the issue, and the account provided by Ms Low, who explained that she and Mr Picard received a 'very direct' message from Mr Keating 'that we shouldn't be meeting the cost of the airfares'. (Ms Low said it was as a result of that message that 'we needed to clarify with [Foster and Yanner] who was paying for the airfares').

In those circumstances it is understandable how Mr Picard might have fixed upon the possibility of Mr Foster and Mr Yanner reimbursing the costs as a means of 'sorting it out'.

Mr Keating, Mr Foster and Ms Low all claimed that they did not consider the press statement to be misleading, but the bases for their beliefs differ.

Mr Keating had not been party to the events of Wednesday 15 December and had no detailed knowledge of the arrangements made. (He was, however, the recipient of Mr Picard's advisory email.)

It is also claimed by Mr Keating that at no point had either Mr Picard or Ms Low suggested to him that the press statement was inaccurate or misleading. Certainly, beyond Mr Picard's email, there is no evidence of anything being said to Mr Keating that ought to have alerted him to the fact that the statement was not accurate.

In contrast, both Mr Picard and Ms Low understood that the travel arrangements were not conditional on a reimbursement. They claimed, however, that in preparing the press statement they acted in the belief that the minister was confused about who would pay. Such a belief is impossible to reconcile with the account given to the CMC by the minister — although it is consistent with the minister's publicly stated position on and after Friday 17 December 2004.

The truth of the matter is that everyone who had been party to the offer to have Mr Foster and Mr Yanner accompany the minister thereafter went about their business in the belief that the minister's office was paying for the travel.

Mr Picard, Ms Low, Mr Keating and the minister all pointed to the fact that Mr Yanner's approval had been sought prior to the release of the statement to the *Australian*. This, however, is rather beside the point: it did not alter what had occurred previously, and nor does it render accurate the otherwise false press statement.

In reality, any acceptance by Mr Yanner of, or acquiescence to, the draft press statement provides no answer to the charge that the press statement was false. At best, on Mr Picard's version, Mr Yanner had agreed — belatedly — to reimburse the cost of his air travel and to consult with his companion, Mr Foster. To the extent that the press statement implied it had always been understood there would be a reimbursement, it was — and remains — false, therefore misleading.

### Issue 3

#### **To what extent were Mr Yanner and Mr Foster encouraged to participate in a 'cover-up'?**

On any view of the evidence, it is apparent that Mr Yanner and/or Mr Foster had been requested to acquiesce in (if not positively facilitate) the wilful misrepresentation of the circumstances of their air travel at public expense.

Mr Picard claimed the file note he produced gives an accurate record of his conversation with Mr Yanner.<sup>23</sup>

It must be said that the file note is consistent in most respects with the account later given by Mr Yanner (to ABC journalist Francis Tapim). For instance, Mr Yanner alleges he was told that (and Mr Picard's file note refers to):

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<sup>23</sup> Mr Picard claims he had a similar conversation with Mr Foster the following morning — Friday 18 December 2004.

- Mr Yanner's travel had become a 'political problem'
- the Police Union and the *Australian* 'have apparently got a story that we agreed to pay for your airfares'
- the Premier's office had 'made it clear the taxpayer won't be paying'
- the minister's office could not pay
- that Mr Yanner was to be invoiced
- a press statement was about to be made by the minister.

The evidence suggests that the press statement that Mr Picard read to Mr Yanner was the same as the one sent a few minutes later to the *Australian*.

Given their understanding of the travel arrangements, it is hardly surprising that Mr Yanner — and later, Mr Foster — might have legitimately perceived that they were being encouraged to be part of a cover-up.

The tenor of the press statement and the urgency that had been attached to the efforts to contact Mr Yanner and Mr Foster clearly implies that they were being asked to lend their support to the account contained in the false statement. At the very least, it seems implicit there was an expectation that they would not challenge the account that was about to be made public.

Additionally, there is one significant point on which Mr Picard's file note of his conversation with Mr Yanner is not consistent with Mr Yanner's allegations.

During the course of his interview with ABC journalist Francis Tapim on the evening of Friday 17 December, Mr Yanner suggested that he had been encouraged by Mr Picard to say publicly that the cost of the airfares was to be reimbursed whereas, in reality, no such expectation existed and no reimbursement would ever occur. He said:

So I was rung by Bruce Picard and Warren Hoey and told that Beattie wanted us to run this angle and would Bradley and I participate and of course I refused to say, **they asked me to lie and say that we agreed to reimburse them but here look don't worry about it you don't really have to reimburse us ...** but we just need to hose this out ... we need you to help pull us out of hole ... you know we will really owe you one.

It was around 6 pm, between 6 and 7 in the evening, roughly around that time. They rang me and said that, you know, Beattie's office had been on to Liddy and these blokes calling me, Warren Hoey, who's the Director-General and Bruce Picard is a senior advisor, and he went off and he's saying the Police Union is up in arms and hammering Beattie, his office, over Liddy paying those tickets and Beattie ... him and his spin doctors said to Liddy and her advisers, here is how we get out of it. **Make this yarn up about the reimbursement.** Yanner and Foster can fix it up and get them to go along with the story and everything will be apples, it will go away. We will hose the Police Union down and we will owe them one.

(Emphasis added)

If Mr Yanner's perception of the conversation is accurate, Mr Picard (and, if he was involved, Mr Hoey too) was promoting a ruse — whereby in addition to the issue of a false public statement, no actual reimbursement would ever occur.

The question of whether or not the 'cover-up' extended to a ruse of this nature comes down to Mr Yanner's word against Mr Picard's. Even with Mr Yanner's cooperation, it would be unlikely that the evidence would be capable of establishing the allegation to the requisite standard. Again, however, it is not too difficult to imagine how Mr Yanner might have inferred that — contrary to what was about to be publicly stated — there was no actual expectation of a reimbursement. It would hardly have been a quantum leap.

## Issue 4

### **Is it improper for ministerial staff to issue a press statement that they know to be false, or otherwise misleading, where the statement concerns the expenditure of public funds?**

According to the Queensland Government's Ministerial Handbook,<sup>24</sup> the 'Office of the Minister' is the administrative unit established to support the minister in the performance of the minister's duties. The office consists of the minister and all ministerial staff '... who directly support the Minister in the carrying out of the Minister's functions as a Minister of the Crown'.

Chapter 3.7 of the Ministerial Handbook provides that it is the role and function of the 'Office of the Minister' to:

- a. provide effective advice to the Minister;
- b. assist the Minister in the administration of the Minister's portfolio responsibilities;
- c. assist the Minister in the preparation of government policy;
- d. assist the Minister to disseminate policy and other information to the Department and to the general public;
- e. provide assistance to the Minister as a member of Cabinet and a member of the Executive Council; and
- f. provide assistance to the Minister in their Parliamentary role in so far as that role relates to the discharge of the Minister's duties as a Minister of the Crown.

It cannot be ignored that staff employed within the office of a minister occupy an unusual position within the public sector. They do not, for instance, enjoy the usual tenure of office, but are effectively employed at their minister's pleasure. Further, it is self-evident that there is no requirement for, or expectation that, the minister's staff will act in an apolitical manner. They are not public servants in the traditional sense; their first responsibility lies with assisting the minister whom they are contracted to serve, and the government of which that minister is part. This much is recognised by the Code of Conduct for Ministerial Staff,<sup>25</sup> which sets out within its introductory provisions:

As an officer employed within a ministerial office, you occupy a unique position within the Queensland public sector. The key role that you play in providing advice and administrative support to the Minister places you in a position of significant trust. Given this community trust, your conduct, which will also reflect directly upon your Minister, is a matter of legitimate concern by government, other public sector employees and the community.

... In performing official duties, you are expected to act "in the public interest" — which generally means — in accordance with the law, and the policy objectively of the elected government, under the direction of the responsible Minister — to exercise a duty of care in respect of present and foreseeable interests of the whole community.

... How officers employed within ministerial offices use their official positions, their power and the resources available to them, are central concerns of this Code of Conduct.

The Code of Conduct for Ministerial Staff recognises the application of the rule of law, as well as parliamentary conventions such as that of 'ministerial responsibility'. Further, the legislative basis for the code is the *Public Sector Ethics Act 1994*, the objectives of which are:

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24 The foreword explains that the handbook is part of a suite of policy and administrative handbooks collectively entitled *Governing Queensland*, and published by the Queensland Government. The handbooks are designed to explain the processes of government in Queensland, and have been written 'firstly for Ministers, Members of Parliament, and public servants and staff in Ministers' offices'.

25 The code applies to 'all people employed within ministerial offices (excluding the minister), and applies to all officers ...'. Some aspects of the code therefore potentially have an impact on the actions of Mr Picard, Ms Low and Mr Keating.

- to declare specific ethics principles as the basis of good public administration in the Queensland public sector generally, and to define the framework for the Code of Conduct to be developed by each public sector entity;
- to require each entity to develop a Code of Conduct consistent with the ethics obligations set out in the Act;
- to require Chief Executives to implement the entity's Code effectively by means of consultation, consistent administrative practices and procedures and adequate ethics training and education; and
- to provide a statutory basis for standards of exemplary conduct and for disciplinary action for a breach of an entity's Code of Conduct.

(Responsibility for ensuring officers comply with the provisions of the code rests with the relevant minister.)

Therefore, notwithstanding the unique position of ministerial staff, their code of conduct imposes on them the same ethical obligations as are imposed by the *Public Sector Ethics Act 1994* on all public officials. Those obligations include *Respect for the law and the system of government, Integrity and Diligence*.

According to the code of conduct, the obligation to respect the law and Queensland's system of parliamentary government requires ministerial staff to:

exercise duties lawfully, obey lawful instructions, be responsive to the mandate of the government of the day, and provide information and assistance as required to your Minister.

As far as the obligation to demonstrate integrity is concerned, the code imposes an expectation that a minister's staff will, among other things:

- serve the government of the day, through the minister;
- provide comprehensive and rigorous advice;
- base decisions and other actions on thorough and dispassionate analysis; and
- uphold public respect for the minister, the minister's Department and its mission.

As to diligence, the expectation is that ministerial staff are:

... to exercise due diligence, care and attention and shall at all times, seek to achieve high standards of public administration in relation to the duties and responsibilities of their official position.

**Diligence, care and attention**

As a public sector employee paid from the public purse, you have an obligation to work diligently and perform your duties to the best of your ability.

In addition, you also have a duty to exercise due care in your work, particularly where members of the public may rely on the information you provide to them, or where your decisions may affect the rights, property or entitlements of others.

**Provision of accurate and complete information**

You are expected to provide your Minister with advice which is frank, is based on an accurate representation of the facts and which is as comprehensible as possible. This includes setting out the advantages, disadvantages, costs and consequences of the available options and, where appropriate, recommending a particular course of action.'

Both the *Public Sector Ethics Act 1994* and the Code of Conduct for Ministerial Staff provide scope for disciplinary or prosecution action in the event of a failure to comply with the code of conduct. Specifically, the code provides as follows:

The [Public Sector Ethics Act] does not create any new offences for wrongdoing by public sector employees. Where warranted however, failure to comply with the Code may be dealt with under existing disciplinary provisions. Other options also exist for dealing with breaches of the Code and these include informal or formal employee counselling, and/or the application of procedures for the management of diminished performance.

The code counsels that:

... situations may arise from time to time where your conduct may appear to be inconsistent with the provisions of the Code. Often possible breaches of the Code relate to genuine mistakes. If you are concerned that your actions may have been contrary either to a specific provision or the spirit of the Code, you are encouraged to discuss the matter with your Minister or senior member of staff as soon as possible to enable the circumstances that gave rise to the situation to be examined and the matter rectified (if necessary). This will assist in either establishing that no breach of the Code has occurred or minimising any adverse consequences arising from the breach for yourself, your Minister and the Government.

It is unrealistic to expect that press statements and other commentary published by or on behalf of a member of parliament (or indeed, any aspiring politician) will not invariably present fact, policy and argument in the form considered most advantageous to the member. That, after all, is the nature of politics.

However, there must be a distinction between persuasion on the one hand, and outright falsity on the other.

There may be a considerable grey area where room exists for legitimate debate as to whether a particular statement is 'actually false' or, if false, whether the falsehood was wilful or unintentional, important or unimportant. But the community is entitled to expect that its public officers will not be party to the deliberate publication of false statements about matters central to open and accountable government — such as the expenditure of public monies. This is so even if — as in the present case — the expenditure was otherwise entirely proper.

## ASSESSING THE DEGREE OF BLAME

As stated earlier, the task for the CMC was to identify the degree of blame attaching to those who were involved in the creation of the false press statement, so consideration might be given to whether disciplinary action was warranted.

### **Bruce Picard and Marie Low**

On the basis of their accounts to the CMC, it is apparent that Mr Picard and Ms Low were parties to the preparation of the false press statement and that they knew the document was false.

The press statement was sent to the *Australian* and, through it, to the community at large. As already noted, its content was also communicated to the Premier.

Although Mr Picard and Ms Low have both claimed that they did not consider the press statement to be misleading (either because the minister was confused about who was paying, or because they took the trouble to first 'clear' the statement with Mr Yanner), their claim defies objective analysis. To the extent that the press statement asserted that there had (always) been an understanding that the travel costs would be reimbursed, it is demonstrably false.

The CMC considers that, while their conduct does not warrant dismissal (and therefore does not constitute official misconduct), there is nonetheless sufficient evidence to justify the consideration of disciplinary action against Mr Picard and Ms Low for their respective roles in preparing and issuing the false press statement.

Accordingly, this report will be forwarded to the Director-General, Department of the Premier and Cabinet, Dr Leo Keliher, to enable the director-general to determine what disciplinary action, if any, is warranted.

In determining whether their conduct warrants disciplinary action, relevant considerations for the Director-General are likely to include:

- the fact the falsity in the press statement concerned the issue of the expenditure of public monies

- the fact that the falsity was conveyed not only to the *Australian* and through that newspaper to the community at large, but also to Mr Keating and, through him, to the Premier
- the repercussions that have flowed from the publication of the press statement — including the fact that the matter later became the subject of investigation.

Weighing against these considerations are that:

- the expenditure of public monies was properly authorised
- both Mr Picard and Ms Low acted with the approval (if not at the specific direction) of the minister, who ultimately authorised the release of the press statement.

## Liddy Clark

### ***Did the minister behave improperly either by having Mr Foster and Mr Yanner accompany her to Palm Island or by allowing the false press statement to be issued?***

Logically, there was nothing improper in having Mr Foster and Mr Yanner accompany the minister to Palm Island — nor indeed, in having the taxpayer meet their travel costs.

Mr Foster and Mr Yanner are publicly recognised as spokespeople for the wider Indigenous community, and the Palm Island community in particular. Whether they were invited by the minister, or whether the minister accepted the offer of their services, the minister was entitled to authorise Mr Foster and Mr Yanner accompanying her at public expense so that they might assist in facilitating her work in her portfolio of responsibility.

With the benefit of hindsight her decision might have carried with it a high degree of risk of adverse political repercussions. Such considerations are, however, quite properly outside the province of the CMC and have no bearing upon the lawfulness of the minister's actions.

As to the question of the minister's — albeit limited — involvement in the process that led to the issuing of the false press statement, on her own account it is clear that the minister ultimately gave her approval to the release of a statement that she either knew, or at the very least ought to have known, was misleading. Such conduct does not constitute a criminal offence and, as such, cannot amount to official misconduct in the case of a member of parliament.

It is possible, of course — as demonstrated by the present case — that ministerial staff might act in a way that warrants consideration of disciplinary action, while the responsible minister is unable to be disciplined even though not entirely blameless.

## Steve Keating

### ***Did Mr Keating contribute to the falsity of the press statement?***

It is arguable that, having received Mr Picard's email (advising that the minister's office was paying for air travel for Mr Foster and Mr Yanner), Mr Keating ought to have realised that the draft press releases being sent to him by Ms Low were inconsistent with Mr Picard's earlier advice. However, that is not the only interpretation open on the evidence.

It is also possible to draw a distinction between the role played by Mr Picard and Ms Low on the one hand, and Mr Keating on the other.

Mr Keating had not been privy to the arrangements of Wednesday 15 December — his primary involvement had been to convey the Premier's instruction the next day. Thereafter, though he sought to ensure that whatever public statement was made was consistent with the Premier's edict on the matter, Mr Keating is adamant he did not realise the press statement was misleading. The available evidence suggests neither Mr Picard nor Ms Low said anything to Mr Keating to alert him to the fact that the press statement was misleading.

With the benefit of hindsight it is perhaps easy to suggest that Mr Keating ought to have recognised the inherent inconsistency between the email advice of 15 December and the content of the series of draft statements sent to him by Ms Low. Suspicion aside, there is insufficient evidence to establish to the requisite standard that Mr Keating recognised the information in the press release as false.

The reality is that Mr Keating did not have primary responsibility for the preparation of the press statement, nor did he have direct knowledge of the events described therein. Moreover, Mr Keating was entitled to rely upon the information supplied to him by Ms Low and Mr Picard, who both had the requisite direct knowledge. He was entitled to assume — like the public at large — that Mr Picard and Ms Low would not permit a false statement to be published.

In the circumstances it is the CMC's view that there exists no justifiable basis for disciplinary action against Mr Keating.

## **Rob Whiddon**

### ***Did Mr Whiddon contribute to the falsity of the press statement?***

Mr Whiddon was even further removed than Mr Keating from the events of Thursday 16 December. While he was central to ensuring the Premier's instruction was conveyed to those in the minister's office, the available evidence confirms that he otherwise played no part in the preparation of the press statement. There is no logical reason to suspect otherwise.

There is no basis for disciplinary action against Mr Whiddon.

## **Staff of the Premier's office**

### ***Did staff of the Premier's office concoct a 'cover-up' strategy?***

Turning to the specific allegation raised by the Acting Leader of the Opposition that 'staff in the Premier's office had been involved in concocting a cover-up', it is not difficult to appreciate why Mr Yanner interpreted matters in the manner he did. Having travelled to Townsville in the expectation that the minister's office was funding his travel, he was informed that, as a consequence of anticipated criticism by the Police Union and because of a direction from the Premier's office, it was now necessary for him to pay for the cost of his travel (see page 19 for Mr Picard's file note).

Just as there was nothing improper in the minister electing to have Mr Foster and Mr Yanner accompany her to Palm Island at public expense, equally there was nothing improper in the Premier directing that that should not occur.

The impropriety in the matter lies in the preparation of a press statement that contained a false explanation of the circumstances in which public monies had been (or were about to be) expended. This was a process in which Mr Keating had limited involvement, and Mr Whiddon had no involvement.

Crucially, it may be observed that, as a matter of simple logic, an effective 'cover-up' of the travel arrangements based on a notion of 'reimbursement', would be contingent upon Mr Yanner (and Mr Foster) lending their support to the strategy.

In light of the circumstances prevailing at the time, the reality is that it would have been utterly fanciful for the Premier or anyone on his staff to expect that Mr Foster and, in particular, Mr Yanner, would assist in mounting a 'cover-up' — even more so when the catalyst for the 'cover-up' was criticism from the Police Union.

The less than harmonious relationship between the Premier and Mr Yanner is revealed by comments made by the Premier during his guest appearance on Radio 4BC on the morning of Friday 17 December. The Premier said, in part:

... I'm one of the people he dislikes the most. If you have a look at a lot of the commentary ... he belts me up more than anybody. So I'm not someone who's in love with him.

Therefore, while the Premier's intervention undoubtedly influenced much of what followed, the allegation that staff of the Premier's office were involved in concocting a cover-up strategy is not one supported either as a matter of logic or, more significantly, by the evidence. The allegation cannot be substantiated.

## **Warren Hoey**

### ***Was Dr Hoey involved in a 'cover-up'?***

Other than Mr Yanner, who claims that both Mr Picard and Dr Hoey telephoned him on the evening of 16 December 2004 seeking his participation in a 'cover-up', no-one with direct involvement in the matter suggests Dr Hoey was involved either in the making of the travel arrangements or the preparation of the press statement sent to the *Australian*.

This is entirely consistent with Dr Hoey's account to the CMC, which suggests he knew very little of the events played out in the minister's office before the release of the press statement.

Apart from the fact that Dr Hoey has denied telephoning Mr Yanner as alleged, telephone records support Dr Hoey's denial.

In all of the circumstances, the CMC considers it unlikely that Dr Hoey acted in the manner alleged by Mr Yanner. Accordingly, the allegation against Dr Hoey is unsubstantiated.

## **PROCEDURAL FAIRNESS**

Having resolved to report publicly on its investigation, the CMC invited Mr Picard and Ms Low to make submissions about those aspects of the matter where publication might reflect adversely upon them. To assist them, a copy of relevant parts of a draft of this report was provided to them.

Furthermore, the CMC was cognisant of the fact that publication of evidence and commentary about Mr Picard and Ms Low had the potential to itself reflect adversely upon the minister — even if the investigation did not reveal evidence of official misconduct on the minister's part. Accordingly, the CMC determined that the minister should also be given the same opportunity as her staff members to make submissions.

After correspondence inviting submissions had been delivered, the Premier announced that the minister had tendered her resignation as a minister of the Crown. With their consent, the Premier also referred to, and publicly released, those portions of the draft report that had been provided by the CMC to Ms Clark, Mr Picard and Ms Low.

Notwithstanding those events, the CMC remained obliged to consider any submissions received in respect of the matter.

Submissions were received from all three persons and matters raised therein have been considered. In some respects, matters raised in the submissions have been given effect in changes to the final report. However, no substantive change has been made to the draft as released by the Premier.

In their submissions, both Mr Picard and Ms Low asserted that their actions were not intentional — in the sense that they did not deliberately set out to mislead.<sup>26</sup> Their submissions in that regard are more appropriately directed to the Director-General, Department of the Premier and Cabinet for consideration as part of the disciplinary process.

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<sup>26</sup> For example, in her submission to the CMC, Ms Low said: 'Yes, there was clumsy wording in the statement but, despite changes to that particular sentence, there was never any intention to mislead or issue a "false" statement. It may be possible to interpret the statement as "false" with the benefit of hindsight; however, that was not our intention. ... In the pressure of the moment, I was not aware the statement was "false". As already stated, there was no intention to issue a false statement.'

## CONCLUSION

The considerable irony in this matter is that much of what occurred carries no suggestion or suspicion of impropriety. The decision to use public monies to pay for Mr Foster and Mr Yanner to accompany the minister on her visit to Palm Island was justifiable and lawful. So too was the intervention by the Premier (through his ministerial staff) in directing that the proposed travel should not occur at public expense. Equally, the notion that Mr Yanner and Mr Foster might be encouraged to reimburse the cost of their air travel was a legitimate strategy to ensure compliance with the Premier's edict.

The mischief lies in what was an abandonment of the truth (in the wording of a press statement) to avoid the possibility of short-term political embarrassment.