

PALM ISLAND BRIBERY ALLEGATION

Report of a CMC investigation into an
offer made by the Premier of Queensland
to the Palm Island Aboriginal Council

CRIME AND MISCONDUCT COMMISSION

March 2005



CONTENTS

Summary and major findings	2
Section 1: Catalyst for the CMC's investigation	4
CMC's jurisdiction to investigate misconduct	5
Is the Premier the holder of an appointment in a unit of public administration?	5
Could the alleged conduct constitute a dishonest use of official powers or a breach of trust?	5
Section 2: The CMC's inquiries	6
Section 3: Examining the evidence	8
Events leading up to the meetings on 17 February 2005	8
Was the first meeting tape-recorded?	10
Versions of events	13
Andrew Boe	13
Louisa Pink	15
Mike Davies	18
Erykah Kyle	20
Zac Sam	20
Raymond Roberts	21
Nathaniel Prior	21
Rosina Norman	22
Margaret Conway	22
Magdalena Blackley	23
Robert Blackley	23
Alf Lacey	24
Chloe Hooper	25
Mike Reynolds	26
Robert Schwarten	26
Liddy Clark	27
Warren Hoey	27
Mal Grierson	28
Steve Bishop	29
Karen O'Brien	31
Leo Keliher	32
Peter Beattie	33
Section 4: Discussion of the evidence	34
Section 5: Legal argument about whether the conduct in question amounted to a criminal offence	36
Was the offer corrupt?	38
Was there a benefit?	41
Section 6: Conclusions	44
Appendix: Gotterson advice to the CMC	45

SUMMARY AND MAJOR FINDINGS

This report examines whether there was any official misconduct on the part of the Premier of Queensland concerning statements allegedly made by him at a meeting with councillors of the Palm Island Aboriginal Council at Palm Island on Thursday 17 February 2005. The statements related to the waiving of the council debt of \$800 000.

It was alleged that the Premier offered to waive the debt if the councillors accompanied him that day to the opening of the Palm Island Community Youth Centre. The councillors had already announced their intention not to be present at the opening because they were still in mourning for the death in custody the previous November of Palm Island resident Mulrunji Doomadgee (also known as Cameron Doomadgee). Some members of the council felt that the Premier was pressuring them to go against their cultural traditions in relation to respect for the dead, in order for there to be a public display of support for his government.

The Premier denied that the offer to waive the debt was ever contingent solely on the councillors' attendance at the opening of the Palm Island Community Youth Centre. However, he admitted that it was contingent on the Palm Island Aboriginal Council agreeing to a range of measures to improve life on the island. He made no apologies for this and, in fact, believed it to be his duty as Premier of Queensland to do what he could to improve conditions for island residents.

The CMC interviewed all those involved, reviewed the legal advices received, including one obtained by the CMC itself, and carefully considered the circumstances of the case. It also examined an audiotape that was widely reported to contain a recording of the meeting; the tape was blank.

Findings

The evidence, at its worst for the Premier, discloses that he offered to relieve the council of a significant and crippling debt — a debt in effect borne by the Palm Island Aboriginal Community — in exchange for their appearing with him at the opening of a community youth centre.

In the CMC's view, for the conduct to be corrupt it must go beyond the limits imposed by the criminal law on the extent to which politicians may, in our democratic system, seek to secure influence, to strike compromise and to gain advantage for themselves and others. The Premier's conduct did not do so. To determine otherwise would be to, as Finn J wrote, 'run the risk of demanding standards of our elected officials which are beyond their reach and which also may be prejudicial to the very public purposes we ask them to serve for our benefit' (see section 5).

Hence, the CMC has come to the conclusion that the conduct in question was not corrupt and therefore the Premier's conduct could not amount to official misconduct.

In reaching this conclusion, the CMC is mindful of the circumstances in which the offer was made, all of which point to behaviour on the part of the Premier that, in its view, does not amount to corrupt or criminal conduct:

- The offer to pay the debt was not of itself unlawful.
- The issue of the waiver of the council's \$800 000 debt had been the subject of discussion and correspondence between the State Government and the Palm Island Aboriginal Council for some time.
- The offer was made at an open council meeting in the presence of councillors, the council's legal representatives, members of the Palm Island community, other ministers, and senior public servants.
- When the issue of blackmail was first raised with the Premier he immediately denied that bribery was his intention.
- The issue of the debt was still on the table after the opening of the centre and, in the council's draft action plan of 18 February 2005, the council continued to seek the waiver of the debt.

In the CMC's view:

- It could not be held that the conduct of the Premier was corrupt. It follows that it could not constitute a criminal offence under either section 87(1)(a) or (1)(b) of the Queensland Criminal Code, and therefore could not amount to official misconduct.
- It is very doubtful whether there was any 'benefit' to the Premier within the meaning of section 87(1)(a) or (1)(b).

It must be pointed out that the question of whether the offer could constitute a criminal offence, and therefore official misconduct, is quite different from the question of whether the Premier's action was in a political, practical or moral sense a wise one. The CMC has no jurisdiction to comment on the latter question, nor does it wish to make or to imply a view for or against the Premier.

For a full explanation of the legal argument, see section 5 of this report.

SECTION 1: CATALYST FOR THE CMC'S INVESTIGATION

On 19 November 2004 an Aboriginal man, Mulrunji Doomadgee,¹ died in police custody on Palm Island. The death caused unrest on the island, culminating in a riot on 26 November 2004 during which the Palm Island police station and courthouse and a police residence were burnt down.

The Queensland Police Service (QPS) later arrested a number of Indigenous Palm Island residents and charged them with offences relating to the riot. The CMC received several complaints concerning the police response.

On 28 November 2004, the Honourable Peter Beattie MP, Premier and Minister for Trade, travelled to Palm Island to offer the Palm Island Aboriginal Council a five-point plan to improve life for the people of Palm Island. He also flagged his intention to return to the island on 17 February 2005 to meet with the Doomadgee family and to open the newly constructed Community Youth Centre to be run by the Police Citizens Youth Club (PCYC).

It was against this background that the Premier returned to Palm Island on 17 February 2005, despite having been told by the council in the interim that he was not welcome. According to the council, the community was still grieving over Mr Doomadgee's death and, furthermore, the coronial inquest was scheduled to commence on 28 February 2005 in the Community Youth Centre. The council indicated that it did not support the opening of the centre at that time, and would not attend the opening ceremony.

The Premier resolved to proceed with the opening of the centre. Before doing so he attended two meetings with the council. At the first meeting he allegedly offered to provide government funds to relieve the council of an \$800 000 debt, but only on the condition that council members attend the opening of the centre that day. There is considerable dispute as to the terms of the offer the Premier made at the meeting. Although it has been widely reported that the meeting was tape-recorded, no such recording exists.

Whatever the terms of the offer, it is clear that some members of the council were offended by what they described as attempted blackmail. The discussions between the Premier and the council quickly gained widespread notoriety.

By letter dated 23 February 2005 the Premier informed the CMC that it had been suggested to him that some of the councillors who were present at the meeting had concluded that his remarks amounted to an inducement linked to the potential relief of a council debt of \$800 000. He went on to write 'I strongly and unequivocally deny making any inducement of any kind and reject any such allegations'. He concluded that it would be appropriate and desirable for the CMC to review this issue 'as a matter of urgency'.

Also on 23 February 2005 the Premier made a ministerial statement in parliament; considerable debate followed.

On 24 February 2005 the *Courier-Mail* carried a front-page report entitled 'Beattie battles bribe claim by councillors' in which it was reported that the Premier allegedly offered to pay off an \$800 000 debt using departmental funds in exchange for a public show of support by the Palm Island Council (see page 11 for an excerpt from the article).

1 Mulrunji Doomadgee was more commonly known as Cameron Doomadgee.

That day the Premier again wrote to the CMC enclosing certain documents and a copy of the ministerial statement he had made in parliament the day before. He also stated that he 'rejected the proposition that I improperly made inducements to the Palm Island Council during my meeting with them on 17 February 2005'. He added, 'In any event, a payment of the sort, the subject of the allegations, is not mine to approve under the *Financial Administration and Audit Act 1977*; it is that of the director-general of my department, who is the accountable officer under that Act. Furthermore, a payment would be referred to the Cabinet Budget Review Committee for prior approval.'

Upon consideration of the available information, the CMC decided to conduct urgent inquiries into the matter.

CMC'S JURISDICTION TO INVESTIGATE MISCONDUCT

Under section 33 of the *Crime and Misconduct Act 2001* one of the CMC's misconduct functions is 'to ensure that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way'. The term 'deal with' is defined in schedule 2 of the Act and includes investigating the complaint, information or matter, and gathering evidence for prosecutions of offences.

The Crime and Misconduct Act defines misconduct as 'official misconduct'. This means that, for a person who holds an appointment in a unit of public administration 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 by that appointment; or involves a misuse of official information or material.

Additionally, the conduct must (if proved) amount to either a criminal offence or a disciplinary breach providing reasonable grounds for dismissal.

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

Is the Premier the holder of an appointment in a unit of public administration?

The Premier is an elected member of the Legislative Assembly. He is also an appointed member of Executive Council. In these two different capacities, he holds appointments in two different units of public administration.

Could the alleged conduct constitute a dishonest use of official powers or a breach of trust?

In the context of this matter, for the conduct in question to be in the CMC's jurisdiction it must involve the exercise of the Premier's official powers in a way that was not honest or impartial; or in a way that was a breach of the trust placed in him by his appointment as Premier.

If it is considered that the alleged conduct would, if proven, constitute a criminal offence, it follows that the relevant elements of official misconduct in this regard would be satisfied.

Whether the alleged conduct would, if proven, constitute a criminal offence is considered in section 5, following the discussion of the evidence (see section 4).

SECTION 2: THE CMC'S INQUIRIES

CMC investigators interviewed everyone who attended the three council meetings on 17 February 2005, plus Dr Leo Keliher who attended the third meeting only. The interviews were conducted over five days: 24, 25, 27, 28 February and 1 March 2005. The people interviewed (in order of how their testimony appears in this report) were as follows:

Mr Andrew Boe

Boe Lawyers (acting on behalf of the Palm Island Aboriginal Council)

Ms Louisa Pink

Boe Lawyers

Mr Mike Davies

Chief Executive Officer of the Palm Island Aboriginal Council

Councillor Erykah Kyle

Chairperson of the Palm Island Aboriginal Council

Councillor Zac Sam

Deputy Chairperson of the Palm Island Aboriginal Council

Councillor Raymond Roberts

Councillor Nathaniel Prior

Councillor Rosina Norman

Councillor Margaret Conway

Councillor Magdalena Blackley

Mr Robert Blackley

Member of the Community

Mr Alf Lacey

Member of the Community

Ms Chloe Hooper

Freelance writer

The Honourable Mike Reynolds MP

Minister for Child Safety (and Member for Townsville)

The Honourable Robert Schwarten MP

Minister for Public Works, Housing and Racing

Ms Liddy Clark MP

(then) Minister for Aboriginal and Torres Strait Islander Policy

Dr Warren Hoey

Director-General, Department of Aboriginal and Torres Strait Islander Policy

Mr Mal Grierson

Director-General, Department of Public Works

Mr Steve Bishop

Media Advisor to the Premier

Ms Karen O'Brien

Principal Indigenous Adviser, Department of Public Works

Dr Leo Keliher

Director-General, Department of the Premier and Cabinet

The Honourable Peter Beattie MP

Premier and Minister for Trade

Some of the people who attended the meetings took notes (not all of which were taken contemporaneously). Several of the note-takers have since informed the CMC that they have misplaced their notes. All but one of the others have provided copies to the CMC.

As stated above, it has been widely reported that there is an audio tape-recording of the meetings, and a cassette tape said to have been used that day has been provided to the CMC. However, the tape does not contain any record of the meeting. This aspect of the inquiry is referred to later in this report (see page 10).

Relevant documentation was provided by several of the witnesses, principally Mr Boe and the Premier, and has been considered by the CMC.

All interviews were conducted voluntarily with no compulsory process being required. The CMC acknowledges and appreciates the cooperation given by all of those involved in this matter.

At the CMC's request, Mr RW Gotterson QC was asked, in the event that there existed in his opinion a reasonable suspicion of official misconduct, to provide guidance as to the nature of the investigation that the CMC should conduct. He opined that, given the divergence of witness accounts of what was said by the Premier at the meetings, the CMC should direct investigations towards testing the reliability of the witnesses at a hearing of the CMC.

The CMC gave careful consideration to this issue, and Mr Gotterson's advice, but resolved not to approve a hearing in this matter. This was because the CMC decided to consider whether a criminal offence was committed by the Premier on the assumption that the words used by him were substantially as reported in the *Courier-Mail* article of 24 February 2005, the form of these words constituting the strongest case against the Premier. By adopting this approach it was unnecessary for the CMC to test the reliability of witnesses by means of a hearing.

SECTION 3: EXAMINING THE EVIDENCE

EVENTS LEADING UP TO THE MEETINGS ON 17 FEBRUARY 2005

After the Premier's visit to Palm Island on 28 November 2004, and his promise to return on 17 February 2005, there was an exchange of correspondence between the Palm Island Aboriginal Council and the Premier. In one of those letters, dated 17 December 2004, the Chairperson of the Palm Island Aboriginal Council, Ms Erykah Kyle, informed the Premier that she and her fellow councillors had met that day with the Minister for Aboriginal and Torres Strait Islander Policy (then Ms Liddy Clark MP) and the Minister for Child Safety (the Honourable Mike Reynolds MP).

Ms Kyle stated that she asked Ms Clark to look at solutions to two issues she regarded as essential to the wellbeing of the Palm Island people. One of those was that the State Government review the council's debt of more than \$800 000 and consider options for providing debt relief. She told the Premier that Ms Clark had said there was a real possibility of Treasury halving the debt. Ms Kyle wrote that she looked forward to Ms Clark presenting her with options, including the option of complete debt relief, and for resolving these issues early in the new year.

In response to the council's letter of 17 December 2004, the Premier advised the council (in a letter faxed on 10 February 2005) that 'The Government is considering your request to review the debt owed by the Palm Island Aboriginal Council, and I will be in a position to discuss this issue with you further when we meet later this month'. The letter also addressed issues relating to the retail store, policing on the island (including the opening of the youth centre), legal resourcing, waste disposal, hospital services and coordination of government contact with the council.

On 16 February 2005, the council passed a number of resolutions including the following:

2. The Council does not authorise the PCYC Association or the Queensland Police Service using or taking possession of the Centre.
3. The Council wants the Premier to know that it does not want the Centre to be publicly opened until the future use of the Centre has been fully agreed to by the Council and the State Government.
4. The Council will meet the Premier to discuss matters raised in the letter of the Premier to the Council received 11 February 2005 in addition to the issues surrounding the future use of the Centre.

The Premier became aware that his proposed visit to Palm Island and the opening of the centre were opposed by the council and at least some of the Palm Island community.² He resolved nonetheless to attend, and the council agreed to meet with him to discuss the issues.

In anticipation of the Premier's visit on 17 February 2005, Dr Keliher (Director-General of the Department of the Premier and Cabinet) prepared a briefing note for him. The key elements of his visit were described as 'visiting the family of Mr Doomadgee to express sympathy for their loss; opening the Palm

² For example, see the Premier's media release dated 16 February 2005 in which he acknowledged that he had been advised there might be 'people who for some reason are opposed to his return'.

Island Community Youth Centre; and meeting with the Palm Island Aboriginal Council'.³ A number of 'issues' were identified in the briefing note, including the following:

- management of the Queensland Police Citizens Youth Welfare Association
- the need for a management agreement for the Palm Island Community Youth Centre before it could be used by the State Coroner as the venue for the inquest into Mr Doomadgee's death
- progress on the implementation of the five-point plan⁴
- topics that were likely to feature in his discussions with the council. This included issues said to have been previously raised by the council, one of which was described as 'debt management'.

A more detailed attachment to the briefing note refers to a \$1.72m council debt.

As far as the events of 17 February 2005 are concerned, on arrival at Palm Island the Premier's party first visited a local school, and then met with the local employment group and with the Palm Island Community Justice Group.

The meeting between the Premier and the Palm Island Aboriginal Council had been scheduled to take place after the opening of the new building. However, while the Premier was making his way to the site of the PCYC, the Director-General of the Department of Public Works, Mr Grierson, approached him. The Premier told the CMC that Mr Grierson suggested:

... it would be a really good olive branch if I went down to the council and invited them to walk up the hill with me for the opening. So I did.

... I went as an olive branch to get them to ... come up to the opening, because I thought if they went there it would send a signal to the kids of the island that it was okay to go there. And I just wanted the children to start interacting with the police because I thought that would be the best way to improve relations between the police and the community. That's why I did it.

Mr Grierson confirmed that he suggested to the Premier that he call on the council and invite the councillors to attend the opening of the PCYC with him.

As a result, the Premier and his party proceeded to the council offices before opening the centre. He said that he took the chairperson, Ms Kyle, aside and spoke to her privately in her office for about ten minutes. According to the Premier, he said to Ms Kyle:

I don't want to fight with the council. We actually want to work together ... I said to her, 'we've got to open this centre for the kids.'

Ms Kyle told the CMC:

He just began to touch on his concerns, you know ... and he didn't really get too far when there was a knock on the door and somebody put their head around the door, just one of our councillors and so ... whoever it was left at the time and then we started again, and again someone came to the door, so the discussion didn't go any further.

³ Premier's briefing note dated 16 February 2005, 'Visit to Palm Island'.

⁴ The five-point plan is a list of action items by the government described as follows: (1) Restoring law and order, (2) Re-establishing services, (3) Rebuilding infrastructure as a matter of urgency, (4) Finishing an alcohol management plan, and (5) Establishing new governance arrangements with the community.

She stated that they did not discuss the council's debt, the five-point plan or that the Premier wanted the council to come to the opening with him. She said:

He was about to embark, I think, on ... his concerns but ... it was, like I say, a very uncomfortable situation ... but it didn't get into anything as such really.

Upon attending the meeting with the council, Ms Kyle invited the Premier to address the gathering. It was during this first meeting with the council that Mr Beattie made the statements that are the subject of this inquiry. There is a divergence of opinion as to precisely what he said.

The minutes of the meeting, prepared by the Chief Executive Officer of the Council, Mr Davies, are as follows:

Premier Beattie addressed the Councilor and entered into discussion
On various matters.

Keep commitment give on 28th November, 2004 to Chairperson to return

Today 17th February, 2005

- Report on 5 point plan
- Premiers proposal
 - 2 recruit 2 PLOs
 - Local Advisory Committee to become Management Committee over time
 - All go up to open center today
 - Delay AMP until further discussion with Council
 - 2 health workers to assist with alcohol problems
 - start prep year at state school
 - pay debt relief from Premiers Dept budget.

Premier Peter Beattie left the meeting 12:17 pm.

After addressing the meeting the Premier and his party left the councillors alone to discuss some of the issues that he had raised, later returning to the chamber for further discussions.⁵ There is no council minute concerning this part of the discussions.

The Premier and his party then left to open the centre, before returning, according to the council minutes, at 1.45 pm.⁶ The minutes record that discussion continued between the Premier and the councillors about a range of issues including:

Relief from previous Council's financial problems including the Administrators costs of \$800 000 approx.

WAS THE FIRST MEETING TAPE-RECORDED?

On 23 February 2005 electronic media began carrying the story that the council had accused the Premier of bribery.

On 24 February 2005 the *Courier-Mail* carried a front-page report entitled 'Beattie battles bribe claim by councillors', which, after summarising the allegation, read:

5 For ease of reference, this discussion is referred to in this report as the second meeting.

6 For ease of reference, this discussion is referred to in this report as the third meeting.

Beattie battles bribe claim by councillors

Hedley Thomas and Malcolm Coe

... The Palm Island Council today will ask Crime and Misconduct Commission investigators to hear parts of a tape-recorded conversation with Mr Beattie who visited the island north east of Townsville last Thursday. ...

Mr Beattie said he did not know a tape-recorder had been rolling and called on the council to immediately release the transcript.

Sources close to the council provided *The Courier-Mail* with two key passages which will be forwarded to the CMC. In those passages, Mr Beattie allegedly says, 'And, there are some other matters that I want to talk to the council about such as the \$800 000 debt. I know that my director-general who is outside might have a heart attack, but if the council opens the centre with me today, I will clear that debt from my own Premier's budget but the centre must be opened today. Look, if we go up there together and open the centre today, the debt will be cleared.'

The inescapable inference from the story was that there was a tape-recording of the meeting between the Premier and the council, and the Premier could be heard saying the words quoted above.

Later in the day, electronic media reported that Mr Boe would hand over to the CMC a tape-recording of a recent meeting between the Premier and the council.

The CMC interviewed Mr Boe that afternoon and the microcassette tape alleged to be the one used to record the meeting was provided to the CMC. Mr Boe explained to the CMC that the council agreed to give him the tape-recording of the meeting as he intended obtaining legal advice on the issue of the Premier's offer.⁷ He said the tape was handed to him on 18 February 2005 by Ms Kyle.

Mr Boe said he first played the tape when he returned to Brisbane that evening but upon listening to it he 'could not pick up any voices whatsoever'. The next morning he rang Ms Kyle and told her that the tape had nothing on it. She told him it was the only tape she had.

Consequently, Mr Boe decided to draft notes of the meetings with the Premier. It was in these notes that the passage quoted in the *Courier-Mail* article first appeared in writing. The same morning he instructed Ms Pink to also make notes of the meeting. He also told her that the councillors would have to make notes as well.

By letter dated 21 February 2005, Mr Boe wrote to the council and, among other things, advised that 'my first listening to the tape-recording handed to me reveals that there is no recording on it that I can presently hear'.

I would also suggest that if the tape-recording I have is not the correct tape, all efforts should be expended to try to locate the original tape. Also, and in any event, councillors should immediately preserve their notes from the meeting and also make independent notes now of their respective recollections of the Premier's offer.

The CMC interviewed Mr Davies who said that he tape-recorded the meeting on the instructions of the council. He stated that he recorded the meeting by use of a voice-activated microcassette recorder, which he placed on the

⁷ On 18 February 2005, the council met and, among other things, resolved that 'Boe Lawyers hold the tape-recording of the meeting between the Premier and Palm Island Aboriginal Councillors on Thursday 17 February 2005, pending legal advice.'

meeting table. The tape-recorder can be seen on the table in a photograph of the council chamber taken shortly before the start of the meeting.

In his notes Mr Boe wrote that, after the first meeting and while the Premier and his party were out of the room:

I then noticed for the first time that there was a tape-recorder recording the conversation directly in front of where the Premier had been sitting. I knew it to [be] the CEO's tape as he had been using it in earlier meetings. I stopped the recording and handed the tape over my shoulder to Louisa Pink.

During his interview with the CMC Mr Boe said:

I looked across to where the Premier was sitting and in front of him was a hand-held tape-recorder, recording with a tape inside it — I could see the red light on and the recording button, you know pressed. I immediately reached across and stopped it at that point because it was recording what I thought was my private advice to the council. I grabbed the tape and I handed it over my shoulder to Louisa Pink. And she took it away and I turned to the CEO who was now sitting in the Premier's designated seat and I said, we shouldn't be taping these conversations. Up to that point, I had not noticed the tape at all.

For her part Ms Pink noted:

At some point early in this discussion between councillors, Mr Boe picked up a hand-held tape-recorder from its position in front of the chair. He expressed dissatisfaction at the taping of council discussions, removed the microcassette and handed it to me. I placed it on the shelf behind me and after the meeting I placed it in my handbag. After the second meeting with the Premier later that day, some members of council met again. At that time Mike Davies, the council CEO raised a question with council about the format and content of the minutes as he was relying on the tape for this purpose. During the course of this discussion I removed the microcassette from my handbag and passed it over the table to the chair, Ms Kyle. As I did this I said something to the effect that it was the council's tape recording and that council should decide what is to be done with it. During council meetings on the previous day, the issue of the CEO recording meetings was noted several times and he was asked by Mr Boe and Ms Kyle not to record meetings.

In her interview with the CMC Ms Pink confirmed that she passed the microcassette to Ms Kyle.

Ms Kyle told the CMC that she was given the cassette by Ms Pink and put it in her (Ms Kyle's) handbag. The next day Ms Kyle handed the tape to Mr Boe. She said it was the only one in her handbag (although another witness told the CMC that Ms Kyle carries many tapes in her handbag).

Ms Kyle owns a tape-recorder similar to the one used by Mr Davies. The CMC asked for the cassette tape that she used in her own tape-recorder, but she said she had lost the bag in which it was kept (and consequently could not produce the cassette).

Mr Davies told the CMC that the cassette was one of a bundle of three that he had purchased at the same time. He provided the other two cassettes to the CMC. They carry the same batch number as the one handed to the CMC by Mr Boe, which tends to suggest that it is his tape and not someone else's that has been provided to the CMC by mistake. The CMC investigators showed Mr Davies a photocopy of the cassette tape that was given to the CMC by Mr Boe, and Mr Davies identified it (by referring to his handwriting on the tape) as the one that he used to record the relevant meeting.

The cassette tape provided to the CMC by Mr Boe was sent to the QPS Electronic Recording Section (ERS) for analysis. The ERS opined that the cassette tape was a 'virgin' tape; that is, there was no evidence of any recording on it. Furthermore, there was no evidence of any tampering with the tape.

The CMC obtained the tape-recorder used by Mr Davies and it also was sent to the ERS for testing. The results of that testing are that the tape-recorder was in perfect working order. It was also considered that, if the volume control were turned down, it was possible for play mode to be mistaken for record mode, with the only visual difference being that the record button would not physically be latched in.

The CMC has conducted an exhaustive investigation into whether or not the meeting was successfully tape-recorded, but the evidence is such that no conclusion can be confidently drawn. Suffice it to say that the cassette tape said to have been used to record the meeting is blank, and no-one to whom the CMC has spoken admitted to hearing a tape-recording of the first meeting between the Premier and the council on 17 February 2005.

In any event it follows that the CMC's analysis of this matter is based entirely on the recollections of the witnesses who attended the meeting, contemporaneous notes, and notes and statements prepared subsequently.

The following is a summary of the accounts of those people who attended the meetings.

VERSIONS OF EVENTS

Andrew Boe

Mr Boe is a solicitor in the private practice Boe Lawyers. The Palm Island Aboriginal Council engaged him to act on their behalf in three areas:

- at the inquest into Mr Doomadgee's death
- for one of the people charged with an offence arising from the riot that followed Mr Doomadgee's death
- as a conduit between the State Government and the Palm Island Aboriginal Council in relation to the five-point plan.

In her letter of 17 December 2004 to the Premier, Ms Kyle described Mr Boe's role as 'our link to government as we move into this next phase of our work with the Queensland State Government' and 'to gather information from government and to assist us in developing a response to your government's five-point plan'.

Mr Boe told the CMC that the Premier began the first meeting by saying 'what we've got now at the moment is a political problem ... what I want to happen is for all of us to come here and we'll walk up there [to the youth centre] together ... I've read your letter. I've read your resolutions, but you know it's got to be opened today'. According to Mr Boe, the Premier added that he would be happy to conduct the ceremony in any way the council wanted.

In notes he prepared on 19 February 2005, and later provided to the CMC, Mr Boe recorded that the Premier said:

Let me be frank, what I would like to happen is for the council to walk up to the PCYC with me and take part in the opening of the PCYC.

Mr Boe said that the Premier went on to announce a number of proposals, including the participation of Indigenous people on the management committee of the centre. This included an offer by the Commissioner of Police to appoint two Aboriginal liaison officers to the management structure.

In Mr Boe's notes he recorded that the Premier then said words to the effect of:

And, there are some other matters that I want to talk to the council about such as the \$800 000 debt. I know that my director-general who is outside might have a heart attack, but if the council opens the centre with me today, I will clear that debt from my own, Premier's budget, but the centre must be opened today.

Mr Boe asked the Premier whether he would come back and discuss the substantial matters even if the councillors did not attend the opening. The Premier said he would.

Mr Boe told the CMC that he asked that the council be given an opportunity to consider the Premier's offer. He also asked for, and was given, a document to which the Premier had been referring. At that point the Premier and his party left the room. Mr Boe recalled that, apart from himself, those people left in the room were the councillors, Mr Alf Lacey, Ms Louisa Pink (an associate at Boe Lawyers) and Ms Chloe Hooper. Mr Boe said that the moment the others left the room and the door closed Councillor Magdalena Blackley said words to the effect 'Peter is trying to blackmail us'. According to Mr Boe's notes, he too expressed the view that the offer was an attempt at blackmail.

Mr Boe said that he advised them not to offend anybody (with such an accusation) or take up the issue until they knew how the day would unfold. Furthermore, if they did not wish to attend the opening they could just reject the offer. Within a few minutes the council indicated it would reject the offer and not attend the opening.

The second meeting then took place. Mr Boe described what happened next in this way:

There was a bit of tension in the room and I thought the best way to deal with this conflict was that I would just say to the Premier what the decision of the council was and I said something to the effect — the council have considered your offer in relation to what the Police Commissioner has indicated. It's not acceptable to them — they can't go up and open the centre. And I said to him, something to the effect of — these are not necessarily my words, but when you referred to the \$800 000 debt, some councillors took it as an attempt of blackmail. He immediately said, 'Look, I haven't intended that at all'. I said, 'Peter' — because he kept on saying to everybody to call him 'Peter' — 'I understood what you said was — the clearance of the debt was conditional upon them attending the opening with you. And he said, 'No, that's right — that's what I'm still prepared to do'. I said, 'When you make it a condition like that, you've got to understand they've interpreted it in the way they feel'.

In his notes Mr Boe recorded that he thought, but could not be certain, that he then said, 'If it is not a condition, then where's the cheque?' to which the Premier replied:

Look, if we go up there together and open the centre today the debt will be cleared.

In his interview with the CMC Mr Boe said that the Premier responded to a similar question by saying, 'Look, we can talk about that.'

The Premier and his party left to open the centre and returned about an hour later. Mr Boe said the Premier opened the third meeting by saying that he had come to listen and speak about the things they (the council) wished to discuss. Mr Boe responded by asking the Premier, 'Where is the cheque?'. The Premier replied, 'I thought you'd ask that'. Mr Boe then asked, 'Look, it's just that you

said it was not conditional'. Mr Boe said that the Premier 'just ignored [the question] in a sense'. Mr Boe noted that the Premier then resiled from his earlier position and spoke about outcomes he wanted 'in which event the debt would be paid'.

Mr Boe was adamant that the payment of the debt was a specific inducement to obtain the cooperation of the council that day. He told the CMC:

[The Premier] used the words that day: 'It must be open today. If you come up with me today and open the centre with me I will pay that debt'. He used the word 'pay' that debt rather than 'release' the debt: 'I will pay that debt out of my own Premier's funds, Premier's department funds today'. There's no doubt in my mind at all that the reference to the other conditions and the school and all those other projects that occurred when I asked him several times after he came back 'where's the cheque?' and that's when he said it will be part of the package. The reference to a package or any other conditions associated with clearing that debt was not discussed at the first two meetings. It's the first offer and the second meeting when he came back in to receive the response to the offer.

Louisa Pink

Ms Pink is a lawyer employed by Boe Lawyers. She made contemporaneous handwritten notes of the meeting. On 19 February 2005 she typed up those notes, together with some clarification. Both documents were provided to the CMC. Given that Ms Pink's notes of the first meeting were taken contemporaneously they are reproduced below in addition to the typewritten version:

Premier —

Frankly — sat here 28 Nov — committed to come back to open PCYC & report on progress of 5 point plan.

Und some sensitivity about PCYC.

We can have a head butting excise.

Now political problems

I have to open t centre

We have to find a way thru.

Keen to resolve anor few issues

Prob if I don't open it — it wont be opened

4 young people x t island

Proposal to overcome argument

Long discussn c police cssner

Issue = local involment

One x pples x PCYC - ? normal police on beat c trng in dealy c young people

1. Suggest day to day mgnt not to sgt x police but 2 PLOs employed to be t face x t PCYC in t community 2 deal c day 2 day running x t centre

2. Day to day running supported by advisory cttee/mgmt cttee — from local community 2 provide support to branch mgr l4 people.

John Buttigieg.

Don't know how 2 resolve this impasse.

Propose we walk out — all go there Together — chair.

Minutes silence

Hand centre 2 community — 4 new Mgmt 2 B set up ASAP.

Prem has plans for AMP — went thru Cabinet on Mon

Will provde (2) health wkers

Hosp

Ferdy's Haven

2 start prep year
 Will pay \$800 000 debt — out x DPC budget
 But only if we open t centre today.
 Prem dont want to hurt indig people.
 EK Boe lawyers — important 4 our council.
 MB Don't want Beattie 2 leave room
 When U were here — community in crisis — still are
 Magdalene — re resolutions x yesterday.
 Beattie my proposal is new & supercedes that.
 If we can do this we will come back 2 talk thru 5 point plan.
 12.17 all visitors leave.

Ms Pink's typewritten notes are as follows:

Premier:

1. I am going to speak to you frankly. I sat here on 28 November last year and committed to come back to Palm Island to open the PCYC and to report on the progress of the 5 Point Plan.
2. I understand there is some sensitivity about opening the PCYC, and we can have a head butting exercise over this. But I now have a political problem. I have to open the centre. We have to find a way through this. I am also keen to resolve another few issues. There is a problem if I don't open it today — it won't be opened for the young people of the island to use.
3. I have a proposal to overcome the argument. I have had a long discussion with the police commissioner. The issue seems to be local involvement. One of the principles of PCYCs' is that they are not staffed by normal police on the beat with a gun and blue uniform. These police have had specific training in dealing with young people. (Referring to a written document.) We suggest that:
 - a. The day to day management of the PCYC not be given to a sergeant of police but that 2 Police Liaison Officers be employed to be the face of the PCYC in the community to deal with the day to day running of the centre, and
 - b. The day to day running be supported by an advisory committee, which can become a management committee, from the local community — to provide support to the branch manager. We suggest a committee of 14 people, you could have more or less, but that is what the police have suggested to me here.
4. I don't know how to resolve this impasse. I propose that we walk out of this building — and we all go to the PCYC together and we open the centre. The chair can do the welcome or whatever she wants, whatever role she wants to play. We can have a minute's silence. And I can hand the centre to the community and arrangements can be made for new management to be set up as soon as possible.
 - c. I have plans for an Alcohol Management Plan. It went through Cabinet on Monday. We will provide two new health workers. One for the hospital and one for Ferdy's Haven.
 - d. I will pay the council's \$800,000.00 out of my department's budget. My director general, Leo Keliher isn't here, he is waiting outside somewhere and will probably have a fit. But only if we open the centre today.
5. I don't want to hurt indigenous people — they have been hurt enough. I want them to be able to use this centre.
6. At about this point, Andrew Boe interjected, amongst other things, asking for a copy of the document that the Premier was reading from. The Premier said that it was his only copy and not to take offence and to disregard the last paragraph — it was only a suggestion in a briefing. There was mention of John Buttigieg being involved.

Mr Boe:

7. Acknowledged that a proposal had been laid on the table and asked the Premier and others to give the council a few minutes together alone to consider the proposal.

Ms Kyle:

8. Said that she had omitted during the introduction to refer to Boe Lawyers who were very important in assisting the council.

Cr Blackley:

9. I don't want Mr Beattie to leave the room. I want him to hear how we feel. When you were here in November we were a community in crisis, and we still are. I would like to know if you have read our resolutions from yesterday and what you think of them.

Premier:

10. I did read your resolutions but my proposal is a new one which supersedes them. If we can do this (opening of the centre now) then we will come back to talk you through progress on the 5 Point Plan.

The state government visitors all left the room at 12.17 pm.

When interviewed by the CMC, Ms Pink stated that at the first meeting the Premier outlined a number of issues and then:

... he came with a specific statement saying — I need to open the centre today. You know, I will pay the \$800 000 debt — the debt out of my budget — you know, Leo Keliher is out here somewhere ... he just sort of said he'll have a fit, he'll have something if he finds out about it, but you have to come with me today.

Later she said:

Can I say that when I made this record on the Saturday, I was really, I, I looked back on that afterwards — after the debate in the media came up about him talking about the package versus this particular offer and I thought that the way that I set it out makes it look like part of the package. But because I've done that on the Saturday, and I've formatted it that way — I didn't really want to go and change it. It was said that it might be suggested that I've been influenced by what was said. But having said that — it was separate and my recollection was that it was a separate and discrete offer. That the condition of paying — the condition attached to paying the \$800 000 was to go up to the centre today. He was not going to go off to deliver the Alcohol Management Plan that day. In fact, it seemed to me that Cabinet had already made a decision to impose an Alcohol Management Plan. He wasn't there to negotiate that. Although we did discuss it later ... and really it was this two new health workers. But, look, I can just tell you that my impression was clear that, although he talked about a lot of things, he said, I will pay your debt, if you come up to help me open the centre today. And he didn't pay, despite repeated prompts from Andrew. He totally withdrew on that offer.

It is unnecessary to detail Ms Pink's recollection of the discussions that occurred in the absence of the Premier and his party, as her version does not materially differ from that of Mr Boe.

For the second meeting, Ms Pink's handwritten notes are as follows:

Premier

Re blackmail

No — I sd I'm prepared to agree to a range x issues

I have 2 have a package 2 put on t table

There is a huge media pack — Driven off this island — I didn't create t climate

There is a further record:

I will go & do this & come back in same good faith and talk

I am genuine — many things in govt we can do better

In her typed notes Ms Pink recorded Mr Boe asking whether the offer of paying the \$800 000 was conditional. According to Ms Pink's notes, Ms Kyle then expressed the council's concerns about opening the centre too soon, after which the Premier is recorded as saying:

In respect of blackmail. No. I said I'm prepared to agree to a range of issues. I have to have a package to put on the table. There is a huge media pack out there — their presence has been driven off this island — I didn't create this climate.

Following more discussion, the Premier and his party left to attend the opening of the centre. Afterwards he met for the third time with the council. At this meeting, Ms Pink said they discussed some of the bigger issues for Palm Island. Her typed notes record the following (her handwritten notes are not significantly different and need not be repeated in this regard):

Mr Boe

39. Mr Boe had previously interjected at least twice while the Premier was talking, saying in a light hearted tone, 'and what about the \$800 000 debt?' or 'do you have the cheque for the \$800 000 debt?' but the Premier had not responded directly to it — he almost laughed it off. Mr Boe then again asked about the Premier paying the \$800 000 debt.

Premier

40. I want to get the ballpark of where we should go from here, today. We need to look at the 5 Point Plan. We need to look at where to from here. Then the DG (Dr Keliher) and I will resolve (what can be done). If I can get a blueprint (for addressing the community's problems) including addressing the 5 Point Plan, with an action plan on how to get results ... We have committed to providing 2 new positions.

Asked by the CMC whether the Premier ruled out the payment of the \$800 000 debt because the council had not attended the opening, Ms Pink said 'No — he made it then contingent on the outcomes'.

Mike Davies

Mr Davies is the Chief Executive Officer of the Palm Island Aboriginal Council. He told the CMC that he made contemporaneous handwritten notes of the meeting and a copy has been provided to the CMC. His notes of the Premier's opening remarks are as follows:

- Premier
 - 28/11 visit
 - commitment to return to open PCYC
 - report on 5 plan
 - keen to resolve/help PIAC — argument does not help
 - P's proposal
- sergeant and 2PLO's (face of PCYC)
 - advisory cttee? manement cttee
 - (14) becomes arbitrary
 - broad representative
- all go up to centre — open — etc.
- AMP — delayed until discuss with Council (cabinet met last Monday)
 - 2 H-workers
 - Prep year at school
 - Debt \$800.000. (Premier's Dept. budget)

Mr Davies took the CMC investigators through his notes. As can be seen from those notes, the Premier, according to Mr Davies, addressed a number of issues before he raised the matter of opening the centre. Mr Davies said that the words attributed to the Premier in a *Townsville Bulletin* article 'seemed to be the almost exact words that were said':

I know that my director-general, who is outside, might have a heart attack, but if the council opens the centre with me today, I will clear that debt from my own, Premier's budget, but the centre must be opened today.⁸

8 'Premier stands firm', *Townsville Bulletin*, 25 February 2005.

In Mr Davies's notes, the issues of the opening and of the debt are separate items of discussion; yet he told the CMC that they were linked. He explained the apparent contradiction in this way:

- MD I know it's set down in my minutes there that was the order in which things happened. When the Premier said all go up to the centre and open today, the body language around the table was that they weren't going to go up there. They told us before the meeting that they weren't going to go up and then they just — the body language just was, you know, we're not going up there and he picked that up. And so we then went on to regarding the AMP etc. and last thing was mentioned there about the debt and he went on — he basically made that statement at that stage once you mentioned the debt of \$800 000 about funds being available from the Premier's department budget.
- CMC So when did he make that statement? The one that's, you know, recorded as 'but if the council opens the centre with me today I will clear the debt from my own office'?
- MD Yeah that's when it was ... I have got highlighted debt \$800 000 in brackets previous Premier's department budget.
- CMC Is there any reason in the notes you don't have the link between the two ... ?
- MD No. I believe as I wrote my notes that's the timeline how it happened. It wasn't like, you know, linked to that second thing ...
- CMC You say he just would have said we'll go up and open the centre today and then they were quite dismissive of it obviously and then he went onto other issues then he made the big statement. Is there any reason your notes don't reflect that statement in its entirety — it just simply refers to debt relief from Premier's budget.
- CMC They were talking pretty fast at that time and as I said I can only record dot points and just the notes as we're going ... and the reason why I had the tape as well and the council wanted a tape so that I would have that record of what words the Premier did say ... not because there was an issue to take him to issue about it but just that we need to try to record. The aim was try to record the package that was going to be offered and try to get the detail of the package, rather than having to wait for a letter to come up about the package.

It was suggested to Mr Davies that his notes tended to suggest that debt relief was part of a package. Mr Davies agreed that on the day 'it was offered as part of a package; there's no doubt about that'. The interview went on:

- CMC But the words he used seem to link it specifically to only one condition — that is, you come up and open the centre with me. You see the point I'm getting at?
- MD Yeah, but the other thing is to take it in context, the context was that he was offering a package and that's how I took the notes down I've got. I'm trying to note what the package was ... I wasn't trying to note the 'argy-bargy' going on that was to be recorded on the tape, yeah.
- CMC Yeah, but the the notes don't have that condition in reflecting the payment of the \$800 000.
- MD I couldn't write that fast.
- CMC Okay, but it did happen but you just didn't record it ... write down any notes?
- MD I didn't record ninety per cent of that day. I just recorded notes.

Insofar as the second meeting is concerned, Mr Davies recalled Mr Boe suggesting that the debt should be waived unconditionally (he made a brief note to that effect). He could not recall any allegation or suggestion of bribery or blackmail being made during that meeting.

Mr Davies's notes of the third meeting record a discussion of the debt in the following terms:

- AB – \$800,000 Administrators costs
- P – comprehensive letter from PIAC
 - want results
 - 5 point plan
 - today's items

He explained that the Premier wanted a comprehensive letter from the council outlining what it could achieve in the five-point plan, and the other issues discussed that day. He believed that as far as the \$800 000 debt was concerned it was 'still on the table'.

Erykah Kyle

Ms Kyle is the Chairperson of the Palm Island Aboriginal Council. She told the CMC that she made notes of the meetings but has since lost them. When interviewed by the CMC she did not have a detailed recollection of the discussions at the meetings.

She said that her best recollection of the Premier's words concerning the debt is contained in her typed unsigned statement, a copy of which was provided to the CMC. It was prepared on 24 February 2005 and reads as follows:

Statement of offer to the Palm Island Council.

Date: Thursday 17th Feb, 05 at the Council office by Premier Beattie

"If all the Council will get up and walk with me to the PCYC, I will give you a cheque for \$800 000."

Cr Erykah Kyle

At Ms Kyle's insistence, her interview with the CMC was terminated, so the matter could not be further explored.

Zac Sam

Councillor Sam did not make any notes of the meeting. However, on 24 March 2005 he prepared a handwritten unsigned statement as follows:

I recall the Premier stated that he would give us a cheque for \$800 000 debt or pay it out of his own pocket if he has to. If we walked up to the PCYC with him to open it up.

He then walked out of the room, then returned a little later saying that he did not try to bribe us.

Mr Sam told the CMC that at the first meeting with the Premier the issue of the debt was the only thing that was really discussed. His recollection of that aspect of the meeting is reflected in the following statement, which he made during his interview with the CMC:

Well he did say if we walked up with him to the youth centre he'd wipe the \$800 000 debt even if he had to pay for [it] out of his own pocket. I mean I really don't know if they were the exact words, but it was very similar to that.

He could not recall any other condition being attached to the offer to pay the debt. He said, 'it really didn't sound like a bribe to me'.

He said that it was the Premier who first used the word bribery. Mr Sam told the CMC that within a minute of the first meeting ending the Premier 'rushed back in and he [the Premier] said it was not a bribe, 'I did not try and bribe

anyone'. Mr Sam said no-one had suggested to the Premier that the offer to pay the debt was a bribe. Mr Sam did add, however, that he has a hearing problem.

Mr Sam said that the offer to pay the debt was brought up a few times at the third meeting, but he could not recall how the Premier responded.

Raymond Roberts

Councillor Roberts did not take notes of the meeting. He recalled that, at the first meeting, the only thing the Premier really talked about was the PCYC and the establishment of a management committee in which the police would be involved. Mr Roberts said that it was either the Premier or Councillor Blackley who first raised the issue of the \$800 000. According to Mr Roberts, the Premier said:

It came up about the \$800 000 that, that was supposed to be council's debt and he said oh, if you come up, you know, I'll pay for the debt out of my budget, you know, don't worry about where, where it comes from.

Mr Roberts said there were no other conditions attached to the offer. He thought that if they did not go up to the opening with the Premier the debt would not be paid. When asked by the CMC whether the offer was part of a larger package of issues he replied:

No, well he was going to come back and talk to council about that, he just wanted at that moment in time, he wanted the council to go up there with him and open the building up and then he was going to come back and talk to council later on.

Mr Roberts said that he thought it was Councillor Blackley who first said that the Premier's offer sounded like blackmail.

Nathaniel Prior

Councillor Prior said he did take notes at the meetings but he has since lost them. He told the CMC that the Premier began the meeting by touching upon a number of issues — the alcohol management plan, the two community health workers, and the five-point plan. He described this as a softening up process by the Premier who, according to Mr Prior, then went on to say:

If the council does assist me with opening the PCYC I am willing to pay the 800 000 debt out of my own Premier's budget and he went on to say ... he looked back, he looked, leaned back and look to the other ministers to see where his director was and he couldn't see him and he said my director's probably outside having a heart attack now, but that's what I'm willing to do for Palm Island.

Mr Prior said that the Premier did not mention anything about doing this for the children of Palm Island.

He said the Premier also told the meeting that if they did not assist him with the opening of the centre he was not prepared to pay the \$800 000 debt. Mr Prior did not consider that this offer was part of any package of issues. He said that, to him, it sounded like bribery.

Mr Prior said that the second meeting commenced with the Premier immediately saying that he was not trying to bribe anyone.

Mr Prior could not recall the issue being raised at the third meeting.

Rosina Norman

Councillor Norman did not take any notes, but on 24 February 2005 she completed a handwritten signed statement as follows:

On Thursday 17.02.05 the Premier Peter Beattie said to us (the Palm Island Council) that we will all go up to the PCYC and open the Centre, then I will give you [the Council] a cheque for \$800 000, even if I have to pay it out of my own pocket (the Premier's budget).

She told the CMC that, once the first meeting commenced, the Premier spoke about the PCYC and 'talked about this debt, that's all he could say, first and foremost was the debt'. She could not recall him talking about the alcohol management program or health workers. She said 'nothing else was on the agenda'.

The evidence of Ms Norman is not without difficulties in that her account of the first meeting is not at all clear.⁹ However, she is adamant that the Premier said to the council, at the second meeting (not the first):

Come on, why don't you all go up and open the PCYC up and I will give you a cheque of \$800 000, even if I have to pay it out of my own pocket. Look, we have got the children of Palm Island to worry about.

She did not recall the Premier raising the issue of the debt at the third meeting.

Margaret Conway

Councillor Conway told the CMC that at the first meeting the Premier said he was there (on Palm Island) to open the PCYC, and discussed other issues such as the five-point plan and an additional two health workers. She said he:

... just got on to some other stuff, and he wanted us to get up now to come go with him up to the PCYC to open the PCYC. He asked us, and he was saying if we all got up with him and went up there, that he would pay that 800 000 debt that we owe. He'll either send a cheque or he said he'll even pay it out of his own pocket, he was saying.

As far as she was concerned, the issue of the \$800 000 was unrelated to any of the other issues and that the Premier, 'just wanted us to get up and walk up there and open the PCYC with him'.

She said that the Premier was asked to give them some time to discuss the matter. Upon his return to the meeting and without anyone suggesting to him that he had bribed anyone, 'he was waving his hands around in the air saying I didn't bribe anyone' (yet according to her, no-one from the council had suggested to him that he had).

She thought that if the councillors did not go to the opening the debt would remain.

As far as she could recall there was no discussion about the \$800 000 debt at the third meeting.

⁹ There is evidence that Ms Norman became quite upset during the first meeting.

Magdalena Blackley

On 23 February 2005, Ms Blackley swore a statutory declaration in the following terms:

I, Magdalena May Blackley of [address] in the State of Queensland do solemnly and sincerely declare that during a meeting (17.02.05) of PI Council and the Premier Mr P Beattie with gov. officials and community members, Mr Beattie spoke to council about opening the Community Center which the council asked him not to open because of 'respect'. 'The community is in mourning after the Death in Custody of Mulrunji'. This was said to Mr Beattie. I further said when you came to Palm Is. on your last visit 'the community was not only in mourning but was in crisis and we are still in the same position'. After much talks and still seated at our meeting table Mr Beattie said something offensive. 'If we all walk up to the Center now I will settle the Council [sic.] Debt of \$800 000 from the Premiers Dept'. I said this council is offended in that you would mention addressing the \$800 000 debt in the same breath as opening the Community Center. He left the meeting and sat in the chairpersons office at approx 12.15pm. On his return he was waving his arms about and he said 'I did not bribe anyone here'. I did not bribe anyone here. I said Peter if you go up to the Center this Council will not accompany you. You disrespect this community and this council if you open the Center today. All we ask is respect. He left the meeting. He told us he's now going to open the Center. Mr Beattie returned to talk to Council briefly soon after.

She also made this note at the time in her diary:

Mr Peter Beattie said if we all go up to the center I'll settle the Det of 800 000 from the Premier Dept.

Ms Blackley told the CMC that at the first meeting the Premier spoke about the PCYC, a proposed management team for the centre and the employment of two police liaison officers. She said Mr Beattie told the meeting that he had come to Palm Island to open the centre and he intended doing so. She could not recall who first raised the issue of the debt, but that the Premier offered to 'waive that \$800 000 debt if you walk up with me now, walk up with me now, I'll waive that \$800 000 from the Premier's department'.

She told the CMC that she was offended by the offer — and said so to the Premier — which she regarded as an 'attempt to take away their culture' and to blackmail them.

According to Ms Blackley, when the Premier returned (for the second meeting) he was:

... waving his arms around saying he didn't blackmail anybody here he didn't blackmail anybody here. Obviously he must have thought about it or somebody must have told him out in the hallway, that's the way it sounded when he made that statement to council. Because we didn't say anything to him except I said to him this council is offended that you would mention the \$800 000 debt in the same breath as opening the Community centre.

Ms Blackley told the CMC that she said to the Premier that the offer sounded like blackmail to her.

Ms Blackley said to the CMC that at the third meeting someone raised the issue of the \$800 000 by asking, 'Where's the cheque?' Her recollection of the Premier's response is unclear, but from her evidence it seems that the Premier remained willing to address the issue of the debt even after the opening of the centre.

Robert Blackley

Mr Blackley is the Community Networking Officer for the Community Renewal Program on Palm Island, which is conducted through the Department of Works. He has previously worked as a ministerial adviser.

Mr Blackley was invited by the mayor to play the didgeridoo at the commencement of the meeting. After doing so he remained and observed what happened.

He said that the Premier raised a number of issues, including the involvement of police liaison officers in management of the centre, and the establishment of an advisory/management committee for the centre. Mr Blackley said the Premier then made what sounded to him like an offer to waive the debt in exchange for community councillors walking up to the centre with him. The Premier used words to this effect:

'I hear you have a debt. What is that debt?'. (Someone yells out 'Eight hundred and fifty thousand dollars'). 'Well here's an offer. I'll clear that debt from my own budget. Now Leo Keliher is probably outside having a heart attack, right now, but I'll clear it from my own Premier's budget provided that everything with the PCYC's sorted out and we all walk up there now together and open it as a PCYC'.

Mr Blackley was asked by the CMC what the council had to do to get rid of the debt, to which he replied:

They simply had to walk with him up to a community opening and the debt would disappear. I mean they, they'd walk up there, open the building as a PCYC and agree to sort out the management of it, as a PCYC. They didn't have to do much to earn this eight hundred and fifty grand. It was, it was a pretty easy earn. They just needed to walk up there and sign a management agreement.

Mr Blackley said that Mr Boe asked for a moment to consider what he (Mr Boe) described as the new offer that had been put on the table. The Premier and his party left the room as did Mr Blackley. Upon their return the Premier was told that the councillors would not be going to the opening. On the issue of the allegation of blackmail being made, Mr Blackley's evidence is not entirely clear; however, he said that he believed it was suggested to the Premier that he was attempting to blackmail the council. According to Mr Blackley the Premier did not at first respond.

Mr Blackley said that his mother, Councillor Magdalena Blackley, said to Mr Beattie, 'Premier, I've been asked to inform you that we cannot accept your offer of \$850 000 in exchange for walking up to the youth centre with you. We can't and we won't.' Mr Blackley said that the Premier just accepted their position and walked out of the room.

Alf Lacey

Mr Lacey resides on Palm Island, is a former Mayor and Deputy Mayor of the Palm Island Aboriginal Council, and was present in the room to observe the meetings. He said he did take some notes of the meeting but has misplaced them.

Mr Lacey said that the Premier put an offer on the table regarding the payment of the debt. He said that in return for payment of the debt the council had to do 'what has been said in the media around, attending the opening, which is common knowledge now'. Asked whether there was any other condition placed on the payment of the debt he said, 'Not to my recollection. The \$800 000 I think was the first and most important issue that was put on the table in terms of getting council to attend the opening.'

Mr Lacey said he was surprised that the debt was important to the Premier as he understood the Premier's principal concern to be the children of Palm Island.

Chloe Hooper

Ms Hooper, who ordinarily resides in Melbourne, is a freelance writer who at the time of the meetings was on Palm Island conducting research into its history. She made notes of the meeting but these have not been provided to the CMC.

She told the CMC that the Premier spoke to the meeting about the PCYC and said that he understood the council was not happy about the opening. The Premier spoke of appointing two Aboriginal liaison officers to work at the PCYC, establishing a community advisory body.

She said that the Premier:

... mentioned that he understood that they had a debt and he called to his advisers, you know, how much is that debt and the response came back of \$800 000. And he suggested that he would pay the debt himself, that it was very important that the council were seen, that they would be able to walk hand in hand to the PCYC opening. And he made those offers and then went, suggesting that the council might like to think about them . And [he] came and waited in Miss Kyle's office while they formulated a response.

Ms Hooper told the CMC that the Premier said he would pay the debt out of his own department's budget. She also said that he made mention of someone outside being epileptic or having a coronary or something because the offer to pay the debt was too extravagant.

Later in her interview the following exchange occurred:

CH Ah, I understood that it was a package that he was prepared to deliver that day if they could jointly open the centre.

CMC Right. Well what else was involved in the package?

CH The package involved two PLOs from within the community, a community advisory body who would report to the PLOs, who would report to the sergeant and, and the debt being cleared.

CMC Right. So the package related to the management of the centre ...

CH Yes.

CMC ... effectively.

CH Yes.

CMC And then opening it and him paying the \$800 000. Is that, do I understand that? You'll have to answer yes or no because it's being tape-recorded.

CH Yes, that's how I understood it.

Ms Hooper said that during the second meeting the community spoke more of their feelings and their relationship with the police. Ms Blackley told the meeting that she was offended by the Premier's proposal, which she regarded as blackmail. The Premier said she had misunderstood him. For her part, Ms Hooper thought the Premier's offer sounded like a politician being pragmatic.

Ms Hooper said that Mr Boe told the Premier it sounded to the councillors as though he was saying he would pay the debt if they walked down the road with him, but the Premier again suggested he had been misinterpreted.

During the third meeting Mr Boe asked 'Where is the cheque?' (in payment of the council's debt), to which the Premier responded that the debt would be waived or paid off contingent on movement of the approved policies.

Ms Hooper agreed to fax a copy of her notes to the CMC, but at the time of writing this report she had not done so.

Mike Reynolds

The Honourable Mike Reynolds MP is the Minister for Child Safety (and Member for Townsville). Mr Reynolds told the CMC that at the first meeting with the council the Premier flagged a number of issues that he wanted to discuss later in the day. These included the appointment of two Indigenous police liaison officers to work at the PCYC, the alcohol management plan, the employment of two health workers, housing, and a diversionary facility.

Mr Reynolds said:

It was about the package of stuff that we had in our five-point plan. And one of the things that, you know came up at that particular time was the debt as well. The debt had been put on the table at the November meeting that the Premier was present at and I think it was at that meeting as well — it might've been the meeting as well where Liddy Clark and I went over some time later. It was one of those meetings that the debt, the \$800 000 debt, had been talked about. So it was really about a whole package of things.

Mr Reynolds went on to say:

They actually, I think, brought up the \$800 000 debt. And he said, look we've got a package of things we're trying to offer the Palm Island people. We're really here about trying to come to a recognition of what we can do. He said the PCYC, you know, is about the kids on this Island and rather than it not being used for months and months, you know after a coronial inquiry is held and all that period of time — we need to open it. He said — and he then went through — he said I'll put the police, Indigenous police liaison officer; we'll get the alcohol management plan — we'll do this and this. We probably may even be prepared to, you know, waive the \$800 000 debt. And he was saying, look it's really about unity. I don't remember him ever sort of putting his finger on the table and saying, if you come to the PCYC in the terms that has been said, you know we'll waive the \$800 000 debt. In fact he was talking about a package of things, you know, that were actually being put on the table.

Mr Reynolds said that after a break the meeting resumed, and it was either Mr Boe or Ms Blackley who said that the Premier's offer was tantamount to blackmail. Mr Reynolds said that the Premier was staggered by the response to his proposal and he told them he had been misunderstood.

The CMC asked Mr Reynolds whether the words attributed to the Premier in the *Courier-Mail* report were accurate, to which Mr Reynolds responded that the Premier used words 'something like that but not exactly those words'. Mr Reynolds went on to say:

But I clearly know that the Premier didn't at that meeting say — look if you, we've an \$800 000 debt there, you know, the \$800 000, and he didn't actually sort of say on its own — do this and I'll do that. It was all, it was always within the package of things that he was talking about.

Robert Schwarten

The Honourable Robert Schwarten MP is the Minister for Public Works, Housing and Racing. Mr Schwarten said that the Premier began the meeting by explaining that he intended opening the centre come what may and it would be nice if the council could join him. According to Mr Schwarten, the Premier then outlined a package of things he wanted to talk to the council about later that day; for example, housing and the presence of police on the island.

He recalled that the issue of the \$800 000 was raised, but he could not recall by whom. In this regard he said:

The opinion I formed was that the \$800 000 was part of a package of things that we were prepared to put on the table in return for council doing a number of things off their own bat, like endorsing an alcohol management plan, which they clearly didn't want to do.

He said that he heard the 'sorts of words' that were attributed to the Premier in the *Courier-Mail* but 'probably in a different context to that'. He could not recall it being a 'blunt ultimatum of that nature'.

He said that the Premier thought that as an 'issue of goodwill' they should all go up together and open the meeting.

After a break they returned to the table and were told by the council they would not be attending the opening. Mr Schwarten said it was put to the Premier that he had said the debt would only be waived if they attended the opening. The Premier said that was not what he intended.

Mr Schwarten said that at the third meeting all of the issues that were mentioned in the morning were open for discussion.

Liddy Clark

Ms Clark was at the time of the CMC's inquiries the Minister for Aboriginal and Torres Strait Islander Policy. Ms Clark said that the Premier began by saying that he respected the council's wish not to attend the opening of PCYC, but he thought it was really important for the children of Palm Island that it be opened. He said that he was going to go and open the centre, after which he would come back and discuss the agenda items, including the five-point plan, the debt and the alcohol management plan.

She said it was Mr Boe who first raised the issue of the \$800 000 debt. The quote from the *Courier-Mail* was read to her and she was asked whether she recalled the Premier saying anything like that, to which she responded:

I don't recall that whole context. If I had a recall, I should recall the heart attack 'cause I probably would have laughed. But, I don't recall that. I know that it was said. That, you know ... if the debt was such a problem and such an impediment ... he would look at his own budget to clear it. I recall that sort of being said and I do recall him saying that immediately after talking about the debt that we had to go and open the PCYC.

When asked whether meeting the debt was conditional upon the council attending the opening of the centre, she replied, 'No, well, it certainly didn't hit me'.

Warren Hoey

Dr Warren Hoey is the Director-General of the Department of Aboriginal and Torres Strait Islander Policy. Dr Hoey told the CMC that the Premier began with a remark that he had come to Palm Island to open the PCYC and he was very determined to make it available for the children of Palm Island. He said it was not to be controlled by police. He touched upon the five-point plan.

The Premier spent some time saying to the council that the best way forward was for him to open the centre with them. According to Dr Hoey, several councillors entered into a discussion with the Premier, pointing out that he was not welcome and had insulted them. Several broke into tears.

Dr Hoey said the Premier told them that he meant no disrespect to any of them but he could not find a better way forward.

The Premier said he wanted them to go with him and open the centre. Dr Hoey told the CMC that the Premier then said words to the effect of those that were reported in the *Courier-Mail* 'the day before yesterday' because he, Dr Hoey, recalled the Premier making comments about Dr Leo Keliher and a heart attack.¹⁰ He said the Premier was clearly intent on getting some action and was frustrated by their response. The Premier and his party left the room so that the council could discuss the matter.

On their return Dr Hoey observed that Ms Blackley was shaking and he had the impression that she was offended. He said he could not hear Ms Blackley's words exactly, but he picked up that the councillors were offended by money being mentioned during 'sorry time'. He could not recall the word 'blackmail' being mentioned.

Asked by the CMC whether, during the first stage of the first meeting, anything was said that led him to believe that the possibility of an \$800 000 debt relief was in any way contingent on the council accompanying him to the opening, Dr Hoey said, 'Absolutely not at all; no'. Later, Dr Hoey said that his overall impression from the discussion was that the debt relief was part of a package of measures that the Premier would look at and discuss with them later in the day.

Dr Hoey considered that Mr Bishop's notes of the meeting (referred to later in this report) are consistent with his recollection of the discussions.

Mal Grierson

Mr Mal Grierson is the Director-General of the Department of Public Works. In addition he is the State Government Champion for Palm Island.¹¹ Mr Grierson explained that before 17 February 2005 the issue of the council's debt had been the subject of correspondence between the Palm Island Aboriginal Council and the State Government and had also been raised on two or three occasions during his visits to Palm Island.

Mr Grierson told the CMC that the offer to pay the \$800 000 debt was tied in with a whole package of things which were to be discussed at the 'second meeting'.¹² Mr Grierson said:

... he wanted them to come up to the PCYC ... There's no question of that, and his tone was very much one of look, you know, let's be frank — as the Premier does — let's be frank, this is for the kids we've got to do this. We want to do this, come on do the right thing and come with me. Then we can talk about this 800 grand and we can talk about those other things. But it was never in 'if you don't come you will not get the 800 000'; that is absolute rubbish.

10 Dr Hoey was interviewed on 25 February 2005. There was no report in the *Courier-Mail* on 23 February 2005 concerning this matter; however, it was the subject of a story on 24 February 2005 to which reference has earlier been made. It is likely that it was this report to which Dr Hoey was referring in his interview with the CMC.

11 The idea of Government Champions was proposed in the Cape York *Partnerships Options Paper* (June 2002), considered at the Cape York Partnerships Chief Executive Officers Steering Committee Meeting of 19 June 2002. The paper, which was endorsed by the meeting, suggested that directors-general become 'champions' for specific Indigenous communities. One of the functions of a champion is to develop effective working partnerships and positive relationships with community leaders and key community stakeholders. Source: Department of Aboriginal and Torres Strait Islander Policy website <<http://www.indigenous.qld.gov.au>>.

12 Presumably a reference to the meeting originally scheduled with the council after the opening of the PCYC.

Mr Grierson said the suggestion of blackmail was made at the second meeting by either Mr Boe or Ms Blackley and came 'out of left field'. He said the Premier was 'stunned' by the suggestion. According to Mr Grierson, the Premier said this was not blackmail; he was not saying that the council has to do something to get something. Rather, it was about all of them addressing the issues as a package. The Premier told the meeting that, if it was their decision not to attend the opening, he respected that decision, but he was still going to open it.

Mr Grierson pointed out that even after the PCYC was opened they continued to discuss the payment of the debt.

Steve Bishop

Mr Steve Bishop is the Media Advisor to the Premier. During the meetings Mr Bishop took notes, which he described as an aide memoir rather than an accurate record. His notes, which are a combination of shorthand and longhand, were subsequently transcribed. He also prepared a document that sought to expand the notes into a more comprehensive record of the meeting. Copies of all documents have been provided to the CMC.

The transcription of the notes that he took at the first two meetings reads as follows:

Welcome from the chair.

PB I gave a commitment on November 28 that I would return and I would open PCYC and a report card on the 5pt plan

I understand there is some sensitivity about the PCYC

We can resolve this with good will or we can have head butting

I said I would come back and open it.

I came here before I went to the PCYC as a courtesy to the council. If I don't open it, it will sit there. We have spent \$5.5 million and I want to see it open for the benefit of the young people.

We can argue but I don't think it's conducive.

I had a long discussion with the Police Commissioner. It's all about local involvement.

Police for the PCYC are specially trained. Person who will run this is highly regarded by community Day to day management — control is to be with Sgt and 2 police liaison officers and police commissioner and I undertake they will come from the community and be the face of the community.

Day to day management structure and advisory committee will become management committee

It will come from the local community

14 people are suggested but if you want 12 or 15 that's fine.

John Buttegieg has volunteered to be involved.

I would like us to walk out of here.

We would have a minute's silence

We hand the centre to the elders and elders pass it onto you

I have delayed AMP so that we could come here and talk to you.

If we can agree on it there would be two health workers.

There will be prep year

\$800,000 — out of my Prem's Dept

I want to open the PCYC for the children.

Magdalena Blackley: Response: Not acceptable

Should not have mentioned \$800,000 in the same breath

Boe: they feel a sense of blackmail

Boe: They do want the PCYC opened

PB: No-one is threatening blackmail — I have put a complete package on the table.

Blackley: You will show disrespect if you go and open it. We want to wait so we can open it with joy.

Rosina Norman: Police have locked up my daughter and she will not let her children use PCYC

Blackley: We want six month period.

NB: Much of the responses were given by Boe.

Kyle: "This community is in disarray and has been for several years."

End 12.50

Mr Bishop's more expansive notes of the first and second meetings read:

Meeting with council:

The Premier was welcomed by the chair.

The Premier explained that the Government was prepared to make special arrangements for the running of the PCYC so that the community had massive input into how it was run.

This included two police liaison officers who would come from the community and be the face of the community. The Premier also suggested that there should be 14 or 15 people from the community who would initially form an advisory committee which would then become the management committee.

The Premier then explained how he would like everyone at the meeting to accompany him to the opening and how he envisaged the opening taking place.

Finally, he outlined the major problems on the island which he believed needed to be resolved.

He wanted them to have notice of the topics to be discussed later in the day so that they were prepared.

The major problem, he said, was the alcohol management plan.

He said that Cabinet had discussed the implementation of a plan but that it had delayed a final decision so that the Premier could come to the island on this day to talk to them about it.

He said that if everyone could agree on the plan, the Government was prepared to provide two alcohol and drug workers on the island.

He talked about the school and the problem of ensuring that children on the island received a good education.

He said that the Government would announce that there would be a prep year at the state school.

And he talked about a debt of about \$800,000 which — apparently — the council felt was a millstone around its neck.¹³

He talked about this package of problems and solutions, which would need to be worked on and agreed on by the council and the Government.

He said the \$800,000 could be found from the budget of his own department.

Having gone through some of the major items on the agenda, he then said he would go to open the PCYC for the benefit of the children and return for detailed discussions with the council.

The Premier and other Government representatives left the meeting while the council considered the package.

When they returned they were told the package was not acceptable and that the Premier should not have mentioned the \$800,000 in the same breath as other matters.

Mr Boe said they felt a sense of blackmail but the Premier responded:

'No-one is threatening blackmail — I put a complete package on the table'.

¹³ Mr Bishop explained that the words 'the council felt was a millstone around its neck' were his own words by way of summary and not those of the Premier.

When interviewed, Mr Bishop referred to and confirmed the notes replicated above. It is unnecessary therefore to repeat his version of events in this report except in respect of the key issue, that is, the nature of the Premier's offer. In this regard Mr Bishop said as follows:

He talked about this whole package of problems before, saying, yeah let's go and open the PCYC. He'd like them to go and join him with the opening of the PCYC ... it wasn't as if, if you like, that he walked in to this meeting and said, 'Look, I'll give you \$800 000 if you walk with me to the PCYC.'

Mr Bishop said that he did not note the Premier's offer word for word. He explained, 'it did not strike me as being something which was overly important or anything unexpected or something which I should pay special attention to.' He did, however, recall the Premier using these words: 'I want to open the PCYC for the benefit of the children.'

When referred by the CMC to the statement attributed to the Premier in the *Courier-Mail*, Mr Bishop said he could not recall the Premier saying that but 'that's not to say he didn't say it'.

Regarding the third meeting, which followed the opening of the centre, Mr Bishop made the following note concerning the council's debt:

ECON DEV

PB: We have to find jobs and econ

There is no point in dealing with the debt unless there is some recipe for the future

We are happy to talk about agriculture

There should be a TOURISM development here

Mal: You have got to have a land use plan first

PB: If you send me a letter which is a blueprint we will deliver. I want an action plan.

Mr Bishop's more comprehensive notes of this discussion read:

The Premier said that it was essential to create employment and economic development.

He said there was no point in dealing with the council's debt unless there was some recipe for the future.

He said the Government was happy to talk about agriculture and on an island as beautiful as Palm, there should be a tourism development there.

Mr Grierson emphasised that before any development could occur there had to be a land use plan first.

The Premier said: 'If you send me a letter which is a blueprint we will deliver. I want an action plan'.

Mr Bishop was unable to assist with any further recollection of this discussion.

Karen O'Brien

Ms Karen O'Brien is the Principal Indigenous Adviser at the Department of Public Works. She was present at all three meetings and took notes on each occasion. She said that her notes of the first meeting are not as comprehensive as those of the other two meetings as she found it difficult to hear from her position at the first meeting. She subsequently changed places so that she could better hear the meetings. Her notes of the first meeting are as follows:

P Thank you welcome

speak frankly. said 28/11/05. Open the Centre PCYC

commitment come back

Understand sensitivity — read Andrew's letters

resolve good will or head butting

here to resolve political decision

I have to open the Centre
... have to resolve this issue, my agenda \$5½ mil on this project
I want to put a proposal to you long discussion PC
how you run the Centre, some of the things PCYC
not ordinary people from Police

On 18 February she wrote up her notes as follows:

The Premier thanked the Council for their welcome and said that he would speak frankly. He told the meeting that he had said on the 28 November 2004 that he would return to Palm Island to open the PCYC. He made a commitment and he has come back. He understood the sensitivity and had read Andrew's letters. He did not wish to head-but he had to resolve the issue and that this was a \$5½ mil project and he had to open the Centre.

He put a proposal to the Council that PCYC manage the Centre and outlined that there had been long term discussions about the PCYC running the Centre; that PCYC was made up of ordinary people and not a part of Police force.

The council rejected this proposal.

The Premier suggested that he would look at the debt of \$800k being waived as part of a package.

The Premier offered to leave the room for the council to consider his offer to join him at the Youth centre opening.

The Premier and party left the room.

She stated her recollection of the first meeting is limited. She could recall some conversation about the debt and the opening of the PCYC but not the specific words used by the Premier. Nevertheless, she said that it did not strike her that the payment of the \$800 000 debt relief was linked in any way to the council supporting the opening of the PCYC.

There is a reference in her notes to the issue of the \$800 000 being raised at the third meeting. In this regard she noted:

The Premier said to the Council that the five point plan was a blue print of his commitment, put in writing, to try and make things better for Palm Island.

He added that this is a 2 way deal ... and what was needed was:

- an action plan from the Council;
- for Erykah to talk to Mal and get a clear picture of where the Council wanted to go;
- the package could include debt relief but there was no point in fixing up the debt problem without a long term strategy; and
- an agreement to move forward.

Leo Keliher

Dr Keliher, Director-General of the Department of the Premier and Cabinet, was present for the third meeting only. He did offer this view, however:

I can assure you that all of the discussions in the post-luncheon meeting or the post-opening meeting, and all of the discussions I've had with the Premier, including on the way up in the plane, this [the payment of the debt] was only ever a part of a package of activities and there were quid pro quos. I mean the council was expected to do something about their appalling rate collection practices, about managing the housing program on the island, about installing a proper alcohol management plan and ensuring that sly grogging was kept to a minimum, and there were a whole raft of things that the Premier expected the people on the island to do. In return he was prepared to get a pre-school programme running up there. Provide this Youth Citizen, PCYC club and you know there's a whole raft of things that we were going to do if they did a whole raft of things. So, you know, the idea that he would give an 800 thousand dollar debt relief just to have four or five Island councillors stand around with him at an opening, it's laughable. I mean I just can't believe anyone'd seriously suggest that.

Peter Beattie

The Honourable Peter Beattie, Premier and Minister for Trade, explained that when addressing the council he spoke briefly about a range of issues, including the proposed Palm Island Alcohol Management Plan, placement of health workers, and government plans for the introduction of a 'prep-year' at the local primary school.

The Premier also said that he referred to a document that the Commissioner of Police had prepared, which set out a proposal for the shared management and operation of the PCYC. The document — which the Premier ultimately left with the councillors for their consideration — proposed an 'interim management group' to comprise 14 or 15 locals. The Premier explained that he:

... talked about the fact that there would be a sergeant running it but there'd be two community police officers ... And I said to them that's the basis of how it would be run. On the basis of that I wanted them to come up there. That was the invitation.

In other words, according to the Premier, the 'invitation' he gave to the council consisted of the compromise plan for management and operation of the PCYC — as had been proposed in the document prepared by the Commissioner of Police.

According to the Premier, there was some further discussion concerning the Police Commissioner's plan, after which he said:

... there's another matter I want to talk about in terms of the debt. And I said to them if you're prepared to come up there, and I don't remember my exact words on this, you know, I'm prepared to, you know, as part of a package — and I want to stress this — as part of a package, I'd be prepared to waive that debt. We'd be prepared to look at housing. We're prepared to get approvals. You know, I mean if you look at it in context, what I was ... talking about was a special relationship with the council. It was on the basis we would come up with a package to help them, if they started doing something for themselves. And the first part of that had to be coming to the opening of the centre.

... So you know, did I suggest that there would be a waiving of this \$800 000 debt if they were part of a package? The answer is yes. And frankly, I don't see that there's anything wrong or illegal with that. Was it part of that — them going up to the opening of the centre? Yes it was, and it will be, at one point it would have come down presumably to ... even though it's part of a package, it would have been, part of that would have been the \$800 000.

Mr Beattie also argued that there was no political benefit in having the councillors attend the opening of the centre with him. He told the CMC:

There's no personal benefit in this for me. I mean the truth of the matter is here is a community who just burnt the police station and stoned police. Politically for me standing next to the chair of that council and that council at the opening was a political downside in most of the rest of Queensland. You know there's no political benefit for me actually being there with the mayor and that council didn't win me one vote ... But my responsibility as Premier is to rise above that and actually try and get the facility to work and that was the view I took.

SECTION 4: DISCUSSION OF THE EVIDENCE

Although there is no tape-recording of the discussions that took place, there appears to be no real dispute among the various people present at the meeting that the Premier did offer to waive the council debt of \$800 000.

Most, if not all, of the Palm Island witnesses (to use a convenient term) have said that at the same time as making this offer the Premier stated that waiver of the debt was conditional upon the councillors attending the opening of the centre with him. It appears in Ms Pink's handwritten notes made at the time. It does not appear in Mr Davies's notes at the time, but he was adamant that it had been expressed.

A number of government witnesses (again to use a convenient term) conceded that the attendance of the councillors at the opening was mentioned at the same time as the waiving of the debt, but all said that was in the context of a 'package' being offered to the council, the first part of which included the councillor's attendance at the opening. The Premier himself stated at the interview with the CMC that the attendance of the councillors at the opening was part of the waiving of the debt, but only as part of a package.

Despite suggestions to the contrary by two of the councillors, it also appears clear that this offer was referred to by the Premier along with a number of other matters that he was telling the council the government was prepared to consider for the island. This is clear from Ms Pink's notes, and the council CEO, Mr Davies, told the CMC that the offer had to be taken in the context in which it was made; the context was that he (the Premier) was offering a package.

A number of other observations can be made about the state of the evidence:

- The offer to pay the debt was not of itself improper; a government may legitimately forgive a loan owed by a council in financial stress.
- The issue of the waiver of the council's \$800 000 debt had been the subject of discussion and correspondence between the State Government and the council for some time. There is no doubt that it was to be discussed again at the meeting on 17 February 2005, in addition to many other issues of substance.
- The offer was made at an open council meeting in the presence of councillors, the council's legal representatives, members of the Palm Island community, other ministers, and senior public servants.
- When the issue of blackmail was raised at the second meeting, the Premier immediately denied that was his intention. One witness told the CMC that the Premier looked stunned at the suggestion.
- The issue of the debt was still on the table at the third meeting, and, in the council's draft action plan of 18 February 2005, the council continued to seek the waiver of the debt.
- While some of the people at the first meeting raised the suggestion of bribery or blackmail once the meeting broke, an inference is open that at the time of these suggestions being uttered, neither Ms Pink nor Mr Boe, (the council's legal representatives) seriously considered that the words said by the Premier constituted a criminal offence. Indeed Mr Boe, knowing that Mr Beattie was to return, stopped the tape-recorder. He handed the tape to Ms Pink, who later gave it to Ms Kyle. On their evidence, neither lawyer sought to secure the tape at that time, as one

would have expected, even though it would have constituted the best evidence of the Premier's words.

Against this factual background, consideration will now be given to the only statutory provision that may have application to the case: section 87(1) of the Queensland Criminal Code — official corruption.

SECTION 5: LEGAL ARGUMENT OVER WHETHER THE CONDUCT IN QUESTION AMOUNTED TO A CRIMINAL OFFENCE

The question is whether, on any reasonable view of the facts, the Premier appears to have committed a criminal offence under section 87 of the Queensland Criminal Code. If he has done so, the penalty faced is very serious: 14 years' imprisonment and a fine, the amount of which is not limited by the statute. This penalty in itself suggests that the section is not directed at any minor misconduct.

The section reads as follows:

87 Official corruption

- (1) Any person who —
- (a) being employed in the public service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the discharge of the duties of the person's office; or
 - (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;
- is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court.
- (1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

In the absence of a recording of the exact words used by the Premier, the CMC has proceeded on the assumption that they were substantially as reported in the *Courier-Mail* article of 24 February 2005, because this form of words would constitute the strongest case against the Premier:

And, there are some other matters that I want to talk to the council about such as the \$800 000 debt. I know that my director-general who is outside might have a heart attack, but if the council opens the centre with me today, I will clear that debt from my own Premier's budget but the centre must be opened today. Look, if we go up there together and open the centre today, the debt will be cleared.

To decide whether there is a case of criminal conduct to answer, the CMC does not need to determine definitively the context in which these words were presumed spoken. The offer about the debt might have been intended as a quite separate proposal, or one linked to other issues under discussion — a 'package'. As to motive, political prestige may have been in mind, but not necessarily to the exclusion of a desire to build a better relationship with the council, and so with the community of Palm Island.

The CMC has the advantage of three written opinions by senior counsel. (All three counsel provided their advice with the words quoted above in mind.)

The first, 'the Gotterson advice', was sought of Mr Gotterson QC by the CMC. In Mr Gotterson's opinion, there could be a criminal case to answer, albeit a 'rather weak' one.

The second, referred to as 'the Sydney opinion' because it was obtained from a Sydney counsel (on behalf of the Palm Island Aboriginal Council), does not express any concluded view, but says that the Premier 'may have breached' the relevant provision of the Criminal Code.

The third, recently supplied to the CMC, was sought by the Premier from the Solicitor-General. The Solicitor-General expresses the opinion that 'there is no basis for an assertion that the Premier's conduct constituted official misconduct or a criminal offence'.¹⁴

Additionally, assistance can be gained from a report issued by the Criminal Justice Commission (CJC) in December 1996 that included opinions obtained from two senior counsel: Mr Gotterson QC (who has provided the CMC with an opinion on the present matter) and Mr Butler SC. Of those opinions the most detailed and elaborate is that relating to a memorandum of understanding signed by Messrs Borbidge MLA and Cooper MLA and by the President of the Queensland Police Union of Employees. The CMC notes that the 1996 Gotterson–Butler advice has attracted favourable comment from an acknowledged expert in government law and practice, Professor Colin Hughes.¹⁵ This opinion was published as part of the CJC report¹⁶ issued in December 1996, and will be referred to as the 1996 opinion.

It need hardly be pointed out that the question whether the matter should proceed towards prosecution is quite different from the question whether the Premier's action was in a political or practical sense a wise one. The latter is a topic on which the CMC wishes neither to make nor to imply a view for or against the Premier.

¹⁴ The CMC notes, however, that this opinion proceeds on a view of the effect of the second paragraph of section 87(1) rather than the first paragraph, the latter being that on which the CMC's discussion is primarily founded.

It is arguable, under the second paragraph, there needs to be, for example, an offer of a benefit 'on account of any *such* act or omission on the part of *the person so employed or holding such office*'. The emphasised words refer back to previous text: *such* refers to the sorts of acts or omissions mentioned in paragraph (a) and *the person* in (b) 'any person employed in the public service, or being the holder of a public office'. The council is, it is thought, not within the description just quoted, although the councillors are probably holders of public office. (See *R v. McCann* [1988] 2 Qd R 56). But then paragraph (b) requires that a benefit be shown to have been offered to the councillors on account of 'such act or omission', being one done by them 'in the discharge of the duties' of their office. However, the beneficiaries of the \$800 000 offer would not be the councillors personally, but the council itself. And by attending at the opening of the centre a councillor would not be acting in discharge of the functions of their office; they had no duty to attend. In any event, a prosecution based on either paragraph would be faced with the problem of showing that the Premier had acted 'corruptly'.

¹⁵ *Griffith Law Review* [1998], vol. 7, no. 2, p. 221.

¹⁶ *Report on an investigation into a memorandum of understanding between the coalition and QPUE and an investigation into an alleged deal between the ALP and the SSAA*, Criminal Justice Commission, December 1996.

WAS THE OFFER CORRUPT?

It will be noticed that the first paragraph of section 87(1), covers instances in which, for example, a politician tries to get a benefit by promising to do someone a favour, while the second contemplates cases such as those in which, for example, a constituent offers a benefit to the politician, in exchange for a favour. Of course, this explanation of the effect of the paragraph does not attempt to define fully instances to which it applies; importantly, the conduct spoken of must be done 'corruptly'. The expression 'corruptly' is not defined by this section, or elsewhere in the Criminal Code.

The Solicitor-General considered the meaning of the word 'corruptly' in the context of section 87(1)(b). After considering a number of authorities he concluded:

I am unable to see that the offer made by the Premier was made for a purpose which would render his conduct 'corrupt'. The evident purpose was to persuade the Council, by the financial inducement constituted by forgiveness of the debt, to change its policy of opposition into one of cooperation. That there might be an incidental political benefit gained by such an objective is entirely beside the point.

The offering of an inducement of that kind in such circumstances is, in my opinion, far from the notions which the courts have found are inherent in the term 'corruption' or 'corruptly'. Forgiveness of the debt was not only desired by the Council; it had been suggested by the Council itself as part of a set of *qui pro quos* in its plan of 18 February 2005. The Premier's proposal was not different in its essential character: an offer to exercise an aspect of State power in exchange for an exercise of Local Government power.

Regarding the meaning of the word 'corruptly', Mr Gotterson concluded that he understood 'corruptly' in the context of section 87(1)(a) to mean 'purposely, intending that the personal benefit sought be provided on account of what is to be done by the official in that capacity'. However, Mr Gotterson added this caution:

A perplexing aspect of the matter is that by a combination of the very broad definition of benefit and this meaning of corruptly, s. 87(1)(a) is capable of applying to things many would regard as a part of practical politics in Australia, and not corruption. Specifically, this is so where, as here, the benefit sought is political in nature though also of personal advantage, but not pecuniary or proprietary. ...

It is very difficult to draw the line. I am inclined to think that, technically, it would be open to a tribunal of fact to find that what was sought here, was sought corruptly. But it is a rather weak case and one which a tribunal of fact might very well reject.

The words 'corrupt', 'corruption' and 'corruptly' are sometimes freely and loosely used. These words are capable of a very wide meaning. It is of course, common for politicians in office to try to get people to vote for them at elections by promising to do things 'in discharge of the duties' (quoting from s. 87) of the office held, subject of course to the politicians being re-elected. It has been known for politicians to promise the expenditure of large sums in this situation. Even between elections, and when no election is imminent, a politician may be accused of benefiting some group of people — generally a large group — when a major purpose of giving the benefit is alleged to be political advantage, rather than genuine regard for the public interest. Those of a sceptical turn of mind claim to see instances in which politicians give special attention to certain interests principally to get media support, for political ends, from the relevant quarter.

It seems unlikely that the legislature, in enacting section 87, had in mind the creation of a Utopia in which politicians would never make promises or take action on the basis that they would obtain some political advantage, either for themselves personally or for their party interests. Construing section 87 so as to require all such political conduct, if complained of, to be submitted to the consideration of a court, with a view to incarceration of the allegedly offending politician, would be to adopt an impractical view. Under our democratic system politicians are expected to try to get the support, and respond to the needs and desires, not only of the electorate as a whole (or the majority of that electorate) but also to sections of it, such as employers or workers in particular industries. It is commonly thought that actions of this sort can be legitimate, even if by the actions a politician 'attempts to receive or obtain benefit of any kind for himself, herself or any other person,' meaning, for example, the benefit of political support. (The words just quoted are extracted from s. 87.)

The task confronting anyone seeking to apply section 87 to a set of facts is to reach a construction which, while by no means diminishing the risks of behaviour that is in truth corrupt, will not suppress what might be regarded as legitimate political activity. Suggested policy considerations are set forth in a passage written by Finn J (now His Honour Justice Finn):¹⁷

This brings one back to the question of role, and to the modern nature of a parliamentarian's trusteeship. It is right that we should be unrelenting in our insistence upon probity in government and in public administration. But equally we should not forget, as a media-driven Australian public opinion seems in danger of doing, that the processes of the democratic, representative and party-based system to which we have committed ourselves, are based, in part at least, upon the striking of compromises, upon securing and using influence, upon obtaining advantages for constituents, for constituencies, and — let it not be gainsaid — for Members of Parliament and for Ministers. Necessarily, limits, and strict ones at that, must be placed upon the compromises and the like we are prepared to countenance in allowing our systems of government to function. But unless we recognise in the roles we have given our politicians and in the laws that bind them, that in some degree and for some purposes, compromise, the use of influence, and advantage seeking and taking are tolerable if not necessary features of our public life, we run the risk of demanding standards of our elected officials which are beyond their reach and which also may be prejudicial to the very public purposes we ask them to serve for our benefit.

As pointed out by Mr Gotterson in his current opinion, there is a relevant New South Wales authority; it is the decision of the New South Wales Court of Appeal in a case involving another state premier: *Greiner v. Independent Commission against Corruption*.¹⁸ One of the questions discussed by the court related to a similar problem. The Sydney opinion makes no reference to Greiner's case and it appears likely that, had discussion focused on the Greiner decision, this point might have received more detailed treatment.

Neither the 1996 opinion nor the treatment of the problem in the Greiner case is binding on the CMC; however, we would hesitate to reject as incorrect the approach of the New South Wales Court of Appeal, presided over by Gleeson CJ in the Greiner case, or that of the opinion on which the CMC's predecessor, the CJC, acted in 1996.

17 [1992] 3 *Public Law Review*, 248.

18 [1992] 28 *NSW Law Reports*, 125.

In the Greiner case, Premier Greiner made an arrangement with a member of parliament under which the member, a Dr Metherell, would resign his seat and then be appointed, by a stratagem, to a desirable government job. The purpose of the arrangement, from Mr Greiner's point of view, was political advantage; it was thought that, at the by-election resulting from the resignation, a candidate belonging to the premier's own party would be elected. What was urged against Mr Greiner was that there was an offer to Metherell of an undue reward, 'namely the delivery of a political advantage by his resignation from parliament in exchange for a public service appointment, which reward was intended to and did influence the behaviour of Greiner ... in public office, namely to show favour to Metherell in respect of his appointment ...'.¹⁹

The principal issue in the case was whether a statutory definition of 'corruption' was applicable. But the Court of Appeal also made reference to the question whether, within the ordinary meaning of corruption, what Mr Greiner had done was corrupt. They thought it was not. It will be recalled that there was a promise made of a job in exchange for the resignation from Parliament. Mr Greiner was told by the head of the relevant part of the civil service that what was proposed could not lawfully be done. The method then proposed was not pursued and instead a 'manoeuvre or strategy' suggested by the head of the premier's department was adopted. Mr Greiner, it was found, knew that this would be 'a breach of proper or orthodox standards' but thought that it was not legally wrong.

The 'manoeuvre or strategy' was partly carried out, but not completed because of the public and political outcry. One difficulty facing Mr Greiner in the litigation was that, on the findings made, the appointment of Dr Metherell was put into effect without a genuine merit selection.²⁰

There can be no doubt that the conduct of Mr Greiner was serious; it was held that the conduct involved partiality and breach of public trust.²¹ What was done was undoubtedly for political advantage; nevertheless, two members of the court specifically held that the conduct could not properly be described as corrupt, in the ordinary sense, which is the sense in which it is used in section 87 of the Criminal Code.²² The presiding judge, Gleeson CJ, did not express himself so explicitly, but there can be little doubt, reading His Honour's judgment as a whole, that he must have been of the same opinion.

The Greiner case is an important expression of judicial views about the scope of the notion of 'corruption'. The behaviour of the Queensland Premier, in all the circumstances, was surely, from the point of view of the ordinary citizen, less grave than what was alleged against Mr Greiner.

19 See Professor Hughes's article published in *Report on an investigation into a memorandum of understanding between the coalition and QPUE and an investigation into an alleged deal between the ALP and the SSAA*, Criminal Justice Commission, December 1996 (1996 opinion).

20 [1992] 28 *NSW Law Review*, 156, 157.

21 *Ibid.*, 150.

22 *Ibid.*, 150, 180.

WAS THERE A BENEFIT?

The CMC agrees with Mr Gotterson QC that the more relevant paragraph of section 87 is (1)(a), not (1)(b); accordingly, the question is whether the Premier, as the holder of a public office, would receive any benefit on account of the councillors attending the opening of the centre.

In July 1997 the following broad definition of the word 'benefit' was inserted in section 1 of the Criminal Code:

benefit includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

Mr Gotterson adopted the view that, having regard to the definition in section 1 of the Criminal Code, the presence of the councillors may be characterised as a benefit for the Premier for the purposes of section 87(1)(a). Mr Gotterson reasoned:

The presence of councillors would enable a positive media image of cooperation, if not cordiality, between Palm Islanders and the state government to be presented. Their absence would cause the Premier political embarrassment. A positive media image and the avoidance of political embarrassment, it may fairly be considered, would have been of political advantage to the Premier.

A similar conclusion was drawn in the Sydney opinion.

The facts dealt with in the 1996 opinion obtained by the CJC included that members of the then Opposition made a written memorandum of understanding with the then President of the Queensland Police Union of Employees. One of its provisions contemplated that:

The Government shall take advice from the QPUE when selecting the next Commissioner of Police and shall not select an individual for this position that the Union has genuine reason for opposing.

The important point, for present purposes, was that the provision in question, section 155 of the *Electoral Act 1992*, said that: 'A person must not, in order to influence or affect another person's election conduct ... give, or promise or offer to give, property or a benefit of any kind to the other person or a third person'. The absence of any requirement of corruption should be noted.

A conclusion was open that the provisions in the memorandum of understanding were agreed to in order to encourage the union to run an advertising campaign against the then government in the by-election.²³ But the joint opinion declined to give a literal interpretation to the expression 'benefit of any kind'. One reason given was that the section is inapplicable to situations fulfilling two criteria:²⁴

- (i) to confer advantage by way of measures taken as part of the normal processes of government
- (ii) where the promise is to benefit a group or class of persons, the promise is to benefit the members of the group or class generally — no one member or small clique of members is singled out to be specially advantaged.

²³ 1996 opinion, p. 47.

²⁴ *Ibid.*, pp. 30, 50, 51.

There is no mention in the relevant section of exclusion of instances in which the giving of the benefit is part of the normal processes of government; counsel adopted this interpretation to avoid 'the absurd conclusions that promises such as these are illegal as election bribes'.²⁵ Counsel commented:

That kind of conclusion confronts the contemporary democratic electoral process in which politicians and political parties run on platforms which consist of promises of action in government ... It is inconceivable that consequences of this kind were intended. An interpretation of the expression which prohibits conventional democratic conduct of this kind must be rejected.²⁶

The rather unusual provision about not selecting an individual as Commissioner of Police if the union had genuine reason for opposing the appointment was treated, on the whole of the facts, as part of the normal processes of government and therefore not within the section. In sum, the provision in issue was read rather narrowly so as not to criminalise promises of the kind in issue, made for political advantage.

The history of the expression 'benefit of any kind', which appears in section 87 of the Criminal Code, is discussed in the 1996 opinion.²⁷ Conceding that the expression 'benefit' has a potentially broad scope, the 1996 opinion adopted a restricted interpretation, rejecting the view that the benefit in question there was covered.

These considerations are relevant, not only in the situation dealt with in the 1996 opinion, but more generally when considering statutes that may make certain sorts of political conduct unlawful. Here, the question of the meaning of 'benefit' is rather different from that considered in the memorandum of understanding matter.

For section 87(1)(a), the question to consider is whether general political advantage (consisting perhaps of a likelihood of favourable rather than embarrassing photos in the media) is within the intention of the section. Politicians commonly give attention in their actions to improving their political image or avoiding damage to it. If, for example, a Health Minister arranges for highly publicised expensive overseas treatment for a sick infant, prompted by an understanding that bedside pictures of him or her with the infant and the infant's parents would appear in the media, is that the sort of 'benefit' intended to be covered by the section? One would think that, whether or not the politician's motive was thought to be admirable, people would not regard the promise of treatment as a criminal act.

The CMC considers that the benefit here is not such as to come within section 87(1)(a).

For section 87(1)(b), the benefit is the offer of waiver of the council's debt. Such a benefit satisfied both criteria that the 1996 report opined takes particular benefits outside the operation of the section. As previously stated, these criteria are that the benefit would confer advantage by way of measures taken as part of the normal process of government and would advantage a group or class of persons generally, with no one member or small clique of members being singled out to be specially advantaged.

25 1996 opinion, p. 24.

26 *Ibid.*, pp. 24 and 25.

27 *Ibid.*, 19–21.

Here the offer was made for the benefit of the Palm Island Aboriginal Council, which is effectively the local government of Palm Island, and would advantage the entire community of the island.

The current status of the reasoning with respect to 'benefit of any kind' adopted in the major 1996 opinion and then acted on by the CJC is uncertain, having regard to subsequent legislative amendments. As mentioned above, a new definition of the word 'benefit' was inserted in section 1 of the Criminal Code in 1997, not long after the major 1996 opinion was published by the CJC. One might have thought at first sight that the new definition, quoted above, had the effect of negating the treatment of 'benefit' in the major 1996 opinion, but a number of considerations show that this is not so. Firstly, the CMC cannot find in the extensive parliamentary discussion of the amendments to the Criminal Code, which were enacted in July 1997, any suggestion that this was the intention. Secondly, the new definition was inserted in the Code, not in the *Electoral Act 1992*, the interpretation of which was dealt with in the 1996 opinion. Thirdly, the original, completely unqualified, expression 'benefit of any kind' is, if both are read literally, no narrower than the new definition.

In 2002 the former electoral bribery provision in section 155 of the *Electoral Act 1992* was replaced by section 98C of the Criminal Code. This change, together with the new definition inserted in 1997, could have the, presumably accidental, effect of making the analysis of 'benefit of any kind' in the 1996 major opinion no longer material — but there must be doubt whether that is a correct view.

SECTION 6: CONCLUSIONS

The evidence, at its worst for the Premier, discloses that he offered to relieve the Palm Island Aboriginal Council of a significant and crippling debt — a debt in effect borne by the community — in exchange for their appearing with him at the opening of a Police Citizens Community Youth Centre.

Was the Premier's offer corrupt? Would the public of Queensland expect the Premier to be prosecuted on indictment for making the offer, and gaoled for such conduct?

In the CMC's view, for the conduct to be corrupt it must go beyond the limits imposed by the criminal law on the extent to which politicians may, in our democratic system, seek to secure influence, to strike compromise and to gain advantage for themselves and others. In the CMC's view, the Premier's conduct did not do so.

To answer otherwise would be, as Finn J wrote, to 'run the risk of demanding standards of our elected officials which are beyond their reach and which also may be prejudicial to the very public purposes we ask them to serve for our benefit'.

In reaching this conclusion, the CMC is mindful of the circumstances in which the offer was made, all of which point to behaviour on the part of the Premier which, in its view, does not amount to corrupt or criminal conduct:

- The offer to pay the debt was not of itself unlawful.
- The issue of the waiver of the council's \$800 000 debt had been the subject of discussion and correspondence between the State Government and the council for some time.
- The offer was made at an open council meeting in the presence of councillors, the council's legal representatives, members of the Palm Island community, other ministers, and senior public servant.
- When the issue of blackmail was raised at the second meeting, the Premier immediately denied that bribery was his intention.
- The issue of the debt was still on the table at the third meeting and, in the council's draft action plan of 18 February 2005, the council continued to seek the waiver of the debt.

In conclusion, in the CMC's view:

- 1 It could not be held that the conduct of the Premier was corrupt. It follows that it could not constitute a criminal offence under either section 87(1)(a) or (1)(b) of the Queensland Criminal Code, and therefore could not amount to official misconduct.
- 2 In addition, it is very doubtful whether there was any 'benefit' to the Premier within the meaning of section 87(1)(a) or (1)(b).

It must be pointed out that the question of whether the offer could constitute a criminal offence, and therefore official misconduct, is quite different from the question of whether the Premier's action was in a political, practical or moral sense a wise one. The CMC has no jurisdiction to comment on the latter question, nor does it wish to make or imply a view for or against the Premier.

APPENDIX: GOTTERSON ADVICE TO THE CMC

Level 15
239 George Street
BRISBANE QLD 4000
DX 40142
Telephone: (07) 3229 2005
Facsimile: (07) 3210 6628
email: gotterson@qldbar.asn.au
ABN 24 096 341 975

Mr Stephen Lambrides
Assistant Commissioner Misconduct
Crime and Misconduct Commission
Level 3
Terrica Place
140 Creek Street
BRISBANE QLD 4000

RE: ALLEGATION AGAINST THE HON. PETER BEATTIE MP

O P I N I O N

Introduction

On 23rd February 2005, the Premier of Queensland, the Honourable Peter Beattie MP, referred to the Crime and Misconduct Commission (“the Commission”) an allegation that he had attempted improperly to induce councillors of the Palm Island Aboriginal Council (“PIAC”) to attend the opening of the Community Youth Centre on Palm Island by linking such attendance with the potential release of a PIAC debt in the amount of \$800,000.00. The allegation concerns words spoken by the Premier at a meeting with councillors and others in the PIAC boardroom at Palm Island on Thursday 17th February 2005.

The Commission has commenced investigating the matter; conducted interviews with those present at the meeting, and received documents from some of them including handwritten or typed notes of the meeting. Additional documents have been supplied by Boe Lawyers, the solicitors who act for PIAC. The interviewees generally refer to “the opening of the PCYC”. As I understand it, the Community Youth Centre is to be operated as a Police Citizens Youth Club. The Community Youth Centre is referred to as “the PCYC” in this opinion.

Instructions

I am briefed to advise first as to whether the conduct alleged against the Premier gives rise to a reasonable suspicion of official misconduct. If my advice is that it does, I am asked to provide guidance on three specific issues. It is convenient to set out my opinion on the first matter under the following headings.

Statutory background

The Commission has the statutory misconduct functions enunciated in s.33 of the *Crime and Misconduct Act 2001* (“CMA Act”). Relevantly, the Commission must ensure that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way, having regard to the principles set out in s.34 thereof: s.33(b). (The CMA Act compendiously describes a complaint and information or matter of the type referred to in s.33(b) as “a complaint”.)

The term “misconduct” is defined for the purposes of the CMA Act to mean “official misconduct or police misconduct”: schedule 2. The Commission has primary responsibility for dealing with complaints about official misconduct: s.45.

In performing its misconduct functions, the Commission may expeditiously assess a complaint made to it about misconduct and may deal with the complaint itself: s.35(1)(a) and (e). The expansive definition of the expression “deal with” in schedule 2 includes investigating the complaint. The Commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions: s.176(1).

As the terms of my instructions imply, this allegation referred to the Commission by the Premier could not constitute police misconduct. This is clearly so. Instructions focus on the other species of statutory misconduct — official misconduct. In my view, the material briefed does not contain any indication of official misconduct on the part of any person other than the Premier. So the first matter for opinion may be refined to whether, arising out of the allegation, there exists a reasonable suspicion of official misconduct on the part of the Premier.

Official misconduct defined

Official misconduct is defined in s.15 of the CMA Act as:

conduct that could, if proved, be —

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or was the holder of an appointment.

The term “conduct” is defined in s.14 for the purposes of the definition of “official misconduct” as follows:-

means –

- (a) for a person, regardless of whether the person holds an appointment – conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of —
 - (i) a unit of public administration; or
 - (ii) any person holding an appointment; or
- (b) for a person who holds or held an appointment — conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves —
 - (i) the performance of the person’s functions or the exercise of the person’s powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
 - (ii) a breach of the trust placed in the person as the holder of the appointment; or
 - (iii) a misuse of information or material acquired in or in connection with the performance of the person’s functions as the holder of the appointment, whether the misuse is for the person’s benefit or the benefit of someone else.

The definitions of “official misconduct” and “conduct” contain the expression “hold an appointment” which is also defined in s.14 to mean “hold an appointment in a unit of public administration”. In turn, the entities that are units of public administration are listed in s.20(1) of the CMA Act. They include the Legislative Assembly, the Executive Council, and a department.

The Premier as holder of an appointment

The issue whether the Premier holds an appointment is relevant to determining whether the conduct alleged against him is conduct by a person who holds an appointment to which paragraph (b) of the definition of “conduct” in s.14 might apply.

Conduct to which paragraph (b) applies is conduct **as the holder of an appointment**. The Premier is an elected member of the Legislative Assembly. He is also an appointed member of Executive Council. In these two different capacities, he clearly holds appointments in two different units of public administration. However, were the Premier to have engaged in the conduct alleged, he would not have done so either as a member of the Legislative Assembly or as a member of Executive Council.

But it does seem to me that he would have done so as holder of the office of Premier and Minister administering the Premier’s Department. (The references in the statement attributed to him in the allegation to his Director-General and to the debt being cleared from his Premier’s budget strongly link what is alleged to have been said to his department.)

It will be recalled that a department is listed in s.20(1) as a unit of public administration. The term “department” is defined in s.33 of the *Acts Interpretation Act 1954* to be an entity that is a department of government under the *Public Service Act 1996*. I assume that the Premier’s Department is declared to be a department of government under s.7(1) of that Act. A minister is appointed by Governor-in-Council to administer a nominated department or departments: *Constitution of Queensland 2001* s.44. A minister appointed to be the minister responsible for administering a particular department is a person who holds an appointment in that department, in my view. The office held is that of the responsible minister. It is true that a minister is not a public service officer for the purposes of the *Public Service Act*, but that is not to point because the definition of the expression “hold an appointment” in s.14 is not limited to those who are public service officers.

I consider therefore that the conduct alleged could be characterised as conduct on the part of the Premier as holder of an appointment for the purposes of paragraph (b) of the definition of the term “conduct” in s.14.

Applicable limb of the definition of “official misconduct”

There are two limbs to the definition of official misconduct. The first (paragraph (a)) is a criminal offence; the second (paragraph (b)) is a disciplinary breach.

The second limb is not apt to apply to individuals who hold an appointment in a unit of public administration as a member of the Legislative Assembly, a member of Executive Council or as a minister. An elected member of the Legislative Assembly does not render services in the House which may be terminated. Section 72 of the *Parliament of Queensland Act 2001* provides for circumstances in which a member’s seat shall become vacant. One of them is conviction for an offence for which the member is sentenced to more than one year’s imprisonment. If this occurs, the member may no longer serve in the House but that is by virtue of the operation of that Act rather than by termination of services. Ministers hold office at the pleasure of the Governor: *Constitution of Queensland Act 2001* s.34. A minister may be dismissed from office by the Governor; a minister’s “services” are not terminated. Likewise for removal as a member of Executive Council: s.49.

It follows that, for the Premier, any conduct on his part, being conduct within the definition in s.14, could be official misconduct only if it is a criminal offence. It follows also that the first matter for opinion can be further refined to whether, arising out of the allegation, there exists a reasonable suspicion that the Premier has engaged in conduct within the definition in s.14 which, if proved, could be a criminal offence.

Reasonable suspicion

The test of reasonable suspicion is not a statutory test. It is a test adopted by the Commission to guide how it should deal further with a complaint involving alleged misconduct. According to authorities dealing with similar expressions in legislative contexts, to hold a reasonable suspicion means to attain a rationally based degree of satisfaction, not necessarily amounting to belief, but at least extending beyond mere speculation, as to whether something has occurred or not: see, for example, per Ormiston J. in *Commissioner for Corporate Affairs v. Guardian Investments Pty Ltd* [1984] VR 1019, at 1025. This is the meaning I have adopted in approaching the first matter for advice.

Factual allegation

On Saturday 19th February 2005, Ms Louisa Pink of Boe Lawyers prepared a diary note of what she had observed at the meeting on the previous Thursday. She states:-

Meeting commenced 12 noon

Premier:

1. I am going to speak to you frankly. I sat here on 28 November last year and committed to come back to Palm Island to open the PCYC and to report on the progress of the 5 Point Plan.
2. I understand there is some sensitivity about opening the PCYC, and we can have a head butting exercise over this. But I now have a political problem. I have to open the centre. We have to find a way through this. I am also keen to resolve another few issues. There is a problem if I don’t open it today – it won’t be opened for the young people of the island to use.
3. I have a proposal to overcome the argument. I have had a long discussion with the police commissioner. The issue seems to be local involvement. One of the

principles of PCYCs' is that they are not staffed by normal police on the beat with a gun and blue uniform. These police have had specific training in dealing with young people. (Referring to a written document.) We suggest that:

- a. The day to day management of the PCYC not be given to a sergeant of police but that 2 Police Liaison Officers be employed to be the face of the PCYC in the community to deal with the day to day running of the centre, and
 - b. The day to day running be supported by an advisory committee, which can become a management committee, from the local community – to provide support to the branch manager. We suggest a committee of 14 people, you could have more or less, but that is what the police have suggested to me here.
4. I don't know how to resolve this impasse. I propose that we walk out of this building – and we all go to the PCYC together and we open the centre. The chair can do the welcome or whatever she wants, whatever role she wants to play. We can have a minute's silence. And I can hand the centre to the community and arrangements can be made for new management to be set up as soon as possible.
- c. I have plans for an Alcohol Management Plan. It went through Cabinet on Monday. We will provide two new health workers. One for the hospital and one for Ferdys Haven.
 - d. I will pay the council's \$800,000.00 out of my department's budget. My director general, Leo Keliher isn't here, he is waiting outside somewhere and will probably have a fit. But only if we open the centre today.
5. I don't want to hurt indigenous people – they have been hurt enough. I want them to be able to use this centre.
6. At about this point, Andrew Boe interjected, amongst other things, asking for a copy of the document that the Premier was reading from. The Premier said that it was his only copy and not to take offence and to disregard the last paragraph – it was only a suggestion in a briefing. There was mention of John Buttigieg being involved.

Mr Boe

7. Acknowledged that a proposal had been laid on the table and asked the Premier and others to give the council a few minutes together alone to consider the proposal.

Ms Kyle

8. Said that she had omitted during the introduction to refer to Boe Lawyers who were very important in assisting the council.

Cr Blackley

9. I don't want Mr Beattie to leave the room. I want him to hear how we feel. When you were here in November we were a community in crisis, and we still are. I would like to know if you have read our resolutions from yesterday and what you think of them.

Premier

10. I did read your resolutions but my proposal is a new one which supercedes them. If we can do this (opening of the centre now) then we will come back to talk you through progress on the 5 Point Plan.

The state government visitors all left the room at 12.17 p.m.

Ms Pink records that discussion amongst the councillors and their advisers ensued during which Councillor Blackley described the offer to pay the debt as "blackmail". Ms Pink notes that the Premier and entourage returned to the room at 12.34 p.m. He was told that the councillors would not accompany him to open the PCYC and then the following was said:-

Mr Boe

19. No one around the table wants to offend you (to the Premier). They would like to have room to negotiate. People want the centre open and the facility available to the community. But why it has to be a police facility is unacceptable at this time.
20. In respect of your offer of a conditional payment of the \$800,000.00 debt – blackmail has been mentioned. Have you made that offer conditional?

Ms Kyle

21. We are concerned that if the opening of the PCYC is too soon, the reaction from

the community will be visible against that centre. The centre needs to be set in place in accordance with how they feel.

Premier

22. In respect of blackmail. No. I said I'm prepared to agree to a range of issues. I have to have a package to put on the table. There is a huge media pack out there – their presence has been driven off this island – I didn't create this climate.

I have not set out the diary note in full but only sufficient of it as contains the words which constitute the subject of the allegation and conveys the context in which they were spoken.

Mr Boe also made a diary note on Saturday 19th February 2005. It is an admittedly incomplete account of the meeting and concentrates on the debt. According to his note,

4. The Premier said words to the effect of:
'Let me be frank, what I would like to happen is for the council to walk up to the PCYC with me and take part in the opening of the PCYC.'
5. He added that he would be happy to conduct the ceremony in any way that the council wanted.
6. He then said that he had some suggested compromises that he had received from the Commissioner of Police. He read these matters from a one page document that he had.
7. He then added words to the effect:
'And, there are some other matters that I want to talk to the council about such as the \$800,000.00 debt. I know that my Director-General who is outside might have a heart attack, but if the council opens the Centre with me today, I will clear that debt from my own, Premier's budget, but the Centre must be opened today.'
8. After further discussion as to process I said that given that there was a new offer on the table, that the council be given an opportunity to consider its position. I asked him for a copy of what he had read from so that the council could properly consider his position. He gave it to me and asked me to ignore the bottom entry. The note makes no reference to the \$800,000.00 debt.
9. I asked:
'Without pre-judging the council's position, if they were to reject your offer, do you propose to go and open the Centre and then come back and talk about the substantial issues?'
10. The Premier said that that was correct, he would come back to have a more detailed discussion about the matters raised in the correspondence.
11. The Premier and his entourage left the meeting room.

Mr Boe records that when the Premier and his entourage returned, he was told that the council took the offer to discharge the \$800,000.00 debt as a form of blackmail. The Premier said that was not what he intended. Then the following was said:-

17. I replied that: You used the condition that *if* the Council walked up and participated in the opening then you would clear the \$800,000.00 debt.'
18. He said that he was still prepared to do that. I recall that Councillor Blackley said something to the effect of: 'Well I think that it was an attempt to blackmail us.'
19. I can't be certain but I also think I said, 'if it was not a condition, then where's the cheque?' or something like that and the Premier replied something to the effect of: 'Look if we go up there together and open the centre today the debt will be cleared'. I said that the council cannot agree to that course and many of the councillors spoke as to why they could not disrespect the wishes of the family on the issue.

No mechanical recording of the meeting was made. Government ministers and senior public servants who attended the meeting have an altogether different account of what occurred. For example, when interviewed by the Commission on 25th February 2005, Mr Mal Grierson, the Director-General, Department of Public Works, was asked whether the Premier's mention of the \$800,000.00 was tied in any way to councillors accompanying him to the opening of the PCYC. He replied:-

No. It was tied in with a whole package of things that we were going to talk about in the second meeting ... It was never if you don't come you will not get the \$800,000.00; that is absolute rubbish.

What Mr Grierson has said generally reflects what is said by other witnesses on the government side.

The Premier was interviewed by Mr Russell Pearce of the Commission on 25th February 2005. Mr Pearce put to the Premier a quotation attributed to him and published in the *Courier-Mail*. Reading the quotation, the Premier commented:-

I know that my Director-General who is outside would have a heart (attack), I did say something like this, but if the council open the centre with me today I will clear the debt from ... but if we go up there together and open the centre today the debt will be cleared. That's possibly true. I don't have a recollection of every individual word but I accept that is probably accurate. I don't remember every word but that would have been in the context of the general package that I put.

A little later, Mr Pearce said:-

The proposition that's put, I think I'm putting it fairly, is that what you said to them was come with me to the opening of the centre and we'll forget the debt. The downside being if you don't come with me to the opening of the centre, you're not going to get the debt forgiven, now.

To this proposition, the Premier responded:-

Well you can see that that's not true because if you have a look at the letter that they wrote to me of 18th February, you will see that when I went back and discussed this matter with them again it was still on the table and indeed their letter to me of 18th February confirms ... what I said to them was, you come up with an action plan that can deliver for this island and I'll waiver the debt and that was my intention.

Thus, in the interview, the Premier was prepared to concede that he may have said the words attributed to him in the newspaper, or words like them, but maintained that they were spoken in the context of a general package of administrative changes for Palm Island.

The accounts of the witnesses fall broadly into two categories, the accounts of the councillors and their advisers on the one hand; and the accounts of those on the government side on the other. The Premier's account (and that of his principal media adviser, Mr Bishop) differ in some respects from the latter category of accounts but overall are closer to them than to the former category of accounts.

At this point, the divergent accounts have not been tested. It is impossible to make an informed assessment about what category of accounts is more likely to be accepted by a court. Certainly, one could not reasonably conclude now that one category of accounts is inherently improbable and should be disregarded. In these circumstances, for the purposes of this opinion, I think that I should take the category of accounts of events which underpin the allegation referred to the Commission and which is less favourable to the Premier, and consider whether they give rise to a reasonable suspicion. That category is the one that contains the accounts of Mr Boe and Ms Pink.

Criminal offence

The gist of the allegation against the Premier is that he made an offer to the councillors that if they accompanied him to the opening of the PCYC, the debt of \$800,000.00 owed by the PIAC to the state government would be cleared by a payment from his department's budget.

Where an allegation is made that a public official has offered to grant a favour in exchange for something he has requested be done, then attention is directed to the provisions in Chapter 13 of the *Criminal Code* (Qld) which deals with corruption and abuse of office. Section 87 is concerned with official corruption. Section 87(1) provides as follows:-

87 (1) Any person who –

- (a) being employed in the public service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on account of any thing already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the discharge of the duties of the person's office; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any

other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;

is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court.

It is s.87(1)(a) that warrants consideration first because it is directly concerned with corrupt conduct on the part of a public office holder. The Premier, as a Minister of State, is the holder of a public office, being an office under the Crown: see the definition in s.1 and the reference in s.87(1A) to a Minister of the Crown. As holder of that office, the Premier is charged with responsibility for administering the Premier's Department. Section 87(1)(a) clearly may apply to him in that office.

Under s.87(1)(a), what must be sought by the person is "any property or benefit of any kind for himself, herself or any other person". Here, no property was sought. The issue then is whether any **benefit** was sought. To my mind, it is reasonably arguable that it was.

The word "benefit" is defined very comprehensively in s.1 of the *Criminal Code* as including:

property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or intangible value, purpose or attribute.

Here, the Premier urged the councillors to accompany him to the opening of the PCYC. On that all interviewees agree. The opening was to receive extensive media coverage. The presence of councillors would enable a positive media image of cooperation, if not cordiality, between Palm Islanders and the state government to be presented. Their absence would cause the Premier political embarrassment. A positive media image and the avoidance of political embarrassment, it may be fairly considered, would have been of political advantage to the Premier. In this way, the presence of the councillors may be characterised as a benefit for him for the purposes of s.87(1)(a).

The Premier stated in his interview that their presence would have been a political disadvantage to him – risking irritation of voters who are antipathetic to the Palm Islanders' cause. One might wonder then why they were urged to attend the opening. Notwithstanding the Premier's statement, it would be open to a tribunal of fact to find that their attendance was of advantage to the Premier and therefore a benefit for him.

Relevantly, the benefit sought must be sought on account of "anything ... to be afterwards done by the person in the discharge of the duties of the person's office". On the version of events in the allegation, the Premier offered to have the debt cleared by a payment from his departmental funds. According to Dr L Keliher, Director-General of the Premier's Department, technically it is he rather than the Premier who is the officer in the department accountable for disbursement of departmental funds. However, consistently with the observations of Thomas J., Pincus JA. concurring, in *Smith*, at p.558, it would be immaterial that the Premier might not be in a position to lawfully pay or authorise the payment of the debt from departmental funds.

Dr Keliher volunteered that, being realistic, a senior civil servant is cognisant of the wishes of his Minister. When this reality is acknowledged, the Premier's offer is open to the interpretation that he would exercise his considerable influence to see to it that the debt was paid from his department's funds. That would be *some thing to be done* sufficient for the purposes of s.87(1)(a), just as authorising the payment itself would be.

Furthermore, at either the level of directly authorising the payment or of exercising influence to achieve its authorisation, the conduct would be some thing to be done **in the discharge of the duties** of the office of the Premier according to the broad conception accorded that phrase by the High Court in *Herscu v. R* (1991) 173 CLR 276.

There remains one further aspect to the offence in s.87(1)(a) to consider. That is the aspect comprised in the word "**corruptly**": what is done by the person seeking the benefit must be done corruptly. What does the word "corruptly" mean in this context? Where courts have encountered this word in different statutory settings, the modern trend has been to accord it the meaning which Willes J. gave it in *Cooper v. Slade* (1858) 6 HLC 746. At p.773, his Lordship said:-

I think the word 'corruptly' in this statute (the *Corrupt Practices Prevention Act 1854* (UK)) means not 'dishonestly' but in purposely doing an act which the law forbids as tending to corrupt voters, whether it be to give a pecuniary inducement to vote, or a

reward for having voted in any particular manner. Both the giver and the receiver in such a case may be said to act 'corruptly'. The word 'corruptly' seems to be used as a designation of the act of rewarding a man for having voted in a particular way as being corrupt, rather than as part of the definition of the offence.

For examples of the influence of this statement, see *R v Wellburn & Anors* (1979) 68 Cr.App.R. 254, *Gallagher v. R* (1985) 16 A.Crim.R. 215 at 224-7 and *Re Austin* [1994] 1 Qd.R. 225 at 227-8.

Guided by the observations of Willes J., I understand corruptly in the context of s.87(1)(a) to mean purposely, intending that the personal benefit sought be provided on account of what is to be done by the official in that capacity.

A perplexing aspect of the matter is that by a combination of the very broad definition of benefit and this meaning of corruptly, s.87(1)(a) is capable of applying to things that many would regard as part of practical politics in Australia, and not corruption. Specifically, this is so where, as here, the benefit sought is political in nature though also of personal advantage, but not pecuniary or proprietary. A comparison may be made with *Greiner* where the conduct found to have been engaged in by Mr Greiner was described by two judges as not corrupt in any ordinary sense of the word, although it may have satisfied a statutory definition of "corrupt conduct": see per Mahoney JA. at p.150, Priestly JA. at p.180.

It is very difficult to draw the line. I am inclined to think that, technically, it would be open to a tribunal of fact to find that what was sought here, was sought corruptly. But it is a rather weak case and one which a tribunal of fact might very well reject.

To summarise, subject to the immediately preceding qualifications, I consider that the conduct attributed to the Premier in the allegation made against him, gives rise to a reasonable suspicion that he may have committed an offence against s.87(1)(a). In these circumstances, I do not propose to discuss s.87(1)(b) in any detail but note that, in my view, no reasonable suspicion of an offence arises in relation to it.

Conduct and s.14

The conduct to which I have referred as giving rise to the reasonable suspicion of a criminal offence is conduct which would satisfy the definition of conduct in s.14. To commit a criminal offence of official misconduct would involve at least a breach of the trust placed in the public official by virtue of his or her appointment within the scope of s.14(b)(ii): see *Greiner v. ICAC* (1992) 28 NSWLR 125, at 165.

Conclusion on the first matter for opinion

For the preceding reasons, and subject to the qualifications expressed concerning the commission of a criminal offence, I consider that there arises from the conduct alleged against the Premier in the allegation referred by him to the Commission, a reasonable suspicion of official misconduct on his part.

It should also be observed that the Commission has already assembled a significant number of witness statements in which accounts of the Premier's conduct quite different from that in the allegation are given, and which would not ground a reasonable suspicion of official misconduct. No conclusions as to the truth or accuracy of the respective accounts can be drawn at this point.

Specific issues

I now turn to the specific issues on which advice is sought.

Nature of investigation

Given the divergence between the respective accounts of what was said by the Premier at the meeting and the absence of any mechanical recording of proceedings, the Commission should direct investigations towards testing the reliability of the respective accounts of witnesses. That would be best pursued by the conventional forensic process of examination and cross-examination at a hearing of the witnesses who have been interviewed by the Commission.

Public hearing

Generally, Commission hearings are not open to the public. However, for a hearing of this type, the Commission may open it to the public if it considers that closing it to the public would be unfair to a person or contrary to the public interest: CMA Act s.177(2)(b)(i).

I doubt that a closed hearing would be unfair to any person here. The statements attributed to the Premier in the allegation have been published widely. None of the witnesses have attributed other statements or conduct to him which could be regarded as damaging to him (or to anyone else) if published.

However, in my opinion, there are circumstances which would justify the Commission in coming to the view that a closed hearing would be contrary to the public interest. They include the following:-

- the allegation concerns the conduct of the Premier, the Chief Minister of State in Queensland;
- the Commission's belief that public confidence in its dealing with the allegation will be diminished if any hearing it decides to hold is not subjected to public scrutiny;
- there are divergent accounts of witnesses as to crucial events; and
- the Commission's belief that a public, as opposed to a private, hearing would better advance its investigations because public examination is a more reliable method of testing the accuracy of the divergent accounts.

If the Commission is of this view, it may approve that the hearing be a public hearing: s.177(2)(b)(ii).

Terms of reference for a public hearing

I recommend that the hearing's terms of reference be:

to enquire into any possible official misconduct, by way of conduct which constitutes or could constitute a criminal offence or offences, arising out of an allegation referred to the Commission on 23rd February 2005 by the Premier, the Honourable Peter Beattie MP, concerning statements, therein allegedly made by him at a meeting with councillors of the Palm Island Aboriginal Council at Palm Island on Thursday 17th February 2005, relating to a council debt of \$800,000.00.

I advise accordingly.

With compliments,

R.W. GOTTERSON Q.C.
Chambers

7th March 2005