

COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

Fifth Report — “Review of the police investigation into traffic incidents involving a Member of Parliament: WA Police Agency Review” — Tabling

MS M.M. QUIRK (Girrawheen) [10.07 am]: I present for tabling the fifth report of the Community Development and Justice Standing Committee entitled “Review of the police investigation into traffic incidents involving a Member of Parliament: WA Police Agency Review”.

[See paper 1736.]

Ms M.M. QUIRK: The Community Development and Justice Standing Committee commenced its work under this term of Parliament in May 2013. Since that time we have worked extremely hard and tabled two substantial reports—one on police custodial arrangements and the other on disability accommodation support. We have also re-tabled a report on post-traumatic stress disorder of emergency workers that was undertaken by the previous committee. A government response to that report, tabled in October 2012, has not been forthcoming. We have also conducted agency reviews into the Disability Services Commission, the WA Electoral Commission and the Department for Child Protection and Family Support. We are currently conducting an inquiry into the implications for government of an ageing population. Despite these undertakings, which I believe contribute significantly to public policy debate, I am not so naive that I cannot appreciate that this report, the committee’s fifth, is likely to evoke more interest.

At the outset I thank principal research officer Dr Sarah Palmer and research officer Ms Niamh Corbett for their considerable efforts in an inquiry full of challenges in uncharted waters. I thank my colleagues on the committee—the members for Armadale, Collie–Preston, Balcatta and Morley. I note that the dissenting report of the member for Balcatta alleges partiality and bias. I reject that assertion, not least because it reflects adversely on committee staff who have acted professionally and with impeccable integrity.

The Community Development and Justice Standing Committee has, as part of its portfolio, responsibilities for the areas of police and road safety. This report is of an agency review that examined the performance of police in conducting investigations into traffic incidents involving the member for Vasse on 23 February 2014. The committee’s examination included police communications and integration of information related to the incident; investigations undertaken by police officers on the night in question; the nature of demand for police attendance on the night in question; the subsequent conduct of the investigation and collection of evidence; the decision to prosecute; and the charges laid and legal advice sought. I need to stress that these terms of reference were unanimously agreed to by all committee members.

The lack of willingness to provide information to the Parliament was certainly a catalyst for this inquiry. This can be summed up by the Premier’s glib remarks on 13 March 2014 —

The member for Vasse, the then Treasurer, stayed on at the function. What happened after that and when he finally arrived back at his residence, I do not know. Rachael Turnseck has no knowledge of it; she was not there as she had gone home earlier. If members opposite are so interested in what might have happened at that function or after, they should go and ask some of the prominent people in Perth who were there.

The examination was conducted solely within the parameters of the terms of reference. Given that the member for Vasse pleaded guilty in court to certain offences, the committee proceeded on the basis that the elements of those offences were fully admitted. As the committee exclusively concentrated on police conduct in response to those committed offences, the member for Vasse was not called. It was beyond the scope of the inquiry to examine his conduct on the night in question, otherwise natural justice would have demanded the extension to him of the opportunity to answer allegations.

The committee had the benefit of examining the prosecution brief, police running sheets, some forensic reports, mechanical reports and photographs, as well as oral evidence from a number of senior police witnesses. We did not have access to the report prepared by the Public Sector Commissioner, and nor did we seek that. The committee requested that legal advice provided to police by the State Solicitor’s Office be made available. This was clearly important to gauge the appropriateness or otherwise of police action. This was resisted. The police commissioner indicated that although he had no issue with the provision of the legal advice, he had been instructed by the State Solicitor’s Office to resist its production. This in part was overcome once the committee decided to summons the State Solicitor to appear before the committee to argue the point in person. That argument would have lacked merit in any event. First, we found that as the commissioner had issued a press release at the time of charging the member for Vasse, the content of that release was a waiver of any legal professional privilege. Moreover, even if it were not the case as a matter of law, parliamentary privilege overrides any claim of legal professional privilege. A dangerous precedent would have been set had the

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committee not asserted its legal rights. That precedent would have had the potential of curbing legitimate inquiries by standing committees in the future.

Within the police running sheet were references to other potentially probative material that was either not presented to the committee, no longer in existence or not pursued. The oral evidence, for example, suggested that on the morning following the incidents, police had not made any connection between them. It is clear, however, that Wembley police were linking the pole and car crashes on the morning after the incidents. What they did not do was make the connection between these and the report involving the erratic driving of a white Caprice with the registration 1DXJ 315.

Within a briefing note to the Premier dated 10 March 2014, it is noted in response to the eyewitness description of the driver as resembling the member for Vasse that the call taker decided that the description was a joke and did not progress this information. Members of the public are encouraged to report matters to police, yet this was the unfortunate outcome in this case. The committee found that no follow-up occurred between the taking of initial reports and media reports that surfaced some weeks later. Only at that time, when police came under public scrutiny, did they spring into action. By that time, however, long after the event, any deficiencies in the original investigation could not be readily corrected. It was found that once the investigation did commence in earnest, it was conducted under the erroneous assumption that, in the absence of a breathalyser reading, no charges could be laid under section 63 of the Road Traffic Act 1974 for driving under the influence of alcohol. This false assumption influenced the course of further inquiries.

The committee viewed with concern the evidence that conversations between Director General Conran and Deputy Commissioner Brown were not incorporated in the police running sheet. The committee received two separate sheets of paper recording those conversations. The committee was surprised that this had occurred in this case, as such a practice ordinarily attracts sharp criticism in the criminal courts.

The committee was also surprised that any suggestion that third parties may have assisted in obscuring the true nature of the offending behaviour, or sought to minimise it, has been completely overlooked by police. In this regard, Rachael Turnseck, the then minister's chief of staff, was not questioned more generally about her role or duties. In that position, she would have had responsibility for office assets such as the car. It appears that she did not ensure that a RiskCover insurance form was submitted. Her duties would have also included ensuring that the then minister's security details were kept current with police. Her interview with police was lacking in material particulars, and police gave oral evidence that she was less than forthcoming when interviewed. Of note also are the unsolicited remarks of Director General Conran at an early stage of inquiries indicating to Deputy Commissioner Brown that he had concerns for Ms Turnseck's welfare. This may have had the effect of influencing police to run dead on examining Ms Turnseck's conduct further. This conversation certainly appears to have lacked propriety.

It was also noted, however, that Director General Conran did make police aware that a security guard in Dumas House had reported sighting the member for Vasse in the basement emptying a bin full of bottles early on the morning of 23 February. Alerting police to the existence of this evidence in a timely fashion was appropriate. It does, however, appear that this was never followed up by police. Given the ongoing questions about where Mr Buswell went immediately after the wedding reception and where he parked his car, this lack of follow-up is perplexing.

The failure of traffic police to identify the driver of the vehicle is directly attributable to the failure of the dignitary protection unit to maintain and update adequate records on the residence and vehicle details of cabinet members. The evidence heard by the committee about dignitary protection stretched credibility. It is certainly unsatisfactory that dignitary protection had records about senior cabinet members only when that information had been volunteered. There is a legitimate need for dignitary protection to be able to flag members of Parliament on its computer records so that appropriate responses can be undertaken in a timely fashion. Members, and especially ministers, do, by the very nature of their positions, face a high risk of being targeted. It is ironic that, despite no contact with the member for Vasse during the investigation, police were able to identify him as the driver of the vehicle with the registration 1DXJ 315 through fingerprints, yet dignity protection did not possess even basic information about the current residence or car driven by a senior member of cabinet.

Although it is speculation, had those records facilitated identification of the driver on that evening, together with an unequivocal eyewitness account of erratic driving, the police might have given the matter greater attention; and, if coupled with the knowledge that there were a number of outstanding traffic infringement notices for that vehicle, it would have given police a compelling reason to proceed on that night. Hindsight is, of course, a wonderful thing and the committee was mindful that we would be accused of judging events through its distorting lens. Nevertheless, we did form the view that there were a number of questions relating to the police investigation that had not been satisfactorily addressed in any other forum. The community does have a legitimate expectation that our traffic laws will be enforced without fear or favour. The community should also

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have confidence that police will always act in a professional and thorough manner. Moreover, it is not unreasonable to expect that police deploy their significant resources to integrate information and intelligence from different sources.

Prior to this inquiry, there was also media speculation on various factual matters. Within the constraints of the terms of reference of the committee, a number of these issues have been clarified. It did become apparent from our inquiries, for example, that there was a timely, albeit perfunctory, police response to a report of erratic driving in the early hours of Sunday, 23 February 2014. Furthermore, although the police investigation almost three weeks after the incident was professionally conducted, the extent to which admissible evidence could supplement those few initial inquiries was unlikely to be as satisfactory as contemporaneous material. In some cases, best evidence had been destroyed. Conversely a number of other questions arose that were not satisfactorily addressed by police, despite almost a full day of oral evidence and the provision of supplementary material.

The committee has made no definitive finding about the level of intoxication of the member for Vasse. Given, however, that the member was neither interviewed by police nor presented an affirmative defence in a court setting out an alternative explanation, the majority of the committee believes it reasonable to infer that his driving was adversely affected by alcohol. Evidence was presented that he had been at a wedding reception for almost six hours at which wine had been continuously served and that he had been drinking throughout the night. He evinced an intention prior to the function either to take a taxi or to walk home, indicating a consciousness that he might not be in a fit state to drive afterwards. There is no contemporaneous material that suggests alternative explanations. Two witnesses noted nothing out of the ordinary in his behaviour later in the evening. There was oral evidence before the committee that in one of the earlier collisions on that evening, the vehicle's steering may have been damaged rendering the car difficult to drive on the remainder of the journey. However, the vehicle examiner's report found that the vehicle drove with constant pulling to the left but could be counteracted by steering to the right. Based on this evidence, the committee found that it would have been possible for a competent driver to steer the vehicle.

It is also worth noting that there has been a presumption that as these events occurred early in the morning, there was not much traffic around. One witness, however, observed the Caprice partially pull off Roberts Road in such a manner that part of the car was still on the road obstructing traffic. A number of horns sounded and there was still a fair bit of traffic about. The engine was running and the lights were on, and it was parked in that position for about five minutes.

The committee has come to the conclusion that there was a systemic failure at a number of levels on that evening: there was an inadequate police response; dignitary protection was unaware of the then state Treasurer's car registration or home address; and police subsequently let any investigation lapse and left it to the media to join the dots.

Although the nature of our brief did not extend to inquiring into the responses by the Department of the Premier and Cabinet and its senior staff, already noted is a conversation between the director general and the deputy commissioner that could be perceived as injudicious. However, there is no evidence or suggestion of any attempt to falsify, destroy or conceal evidence. Especially regrettable about this incident is its potential to compromise the public message that police struggle daily to sell to the community: alcohol and driving do not mix. The media attention that this incident has received has also drawn attention to the limited nature of the police response, and raises questions about the value of campaigning on drink-driving if enforcement is so publicly mediocre—so much for “anytime, anywhere”.

The committee also notes with regret commentary that its inquiry was politically motivated.

Several members interjected.

The ACTING SPEAKER: Members!

Ms M.M. QUIRK: The committee also notes with regret commentary that its inquiry was politically motivated.

Mr C.J. Barnett interjected.

The ACTING SPEAKER: Excuse me! Members, I will not tolerate any interjection, and I will not tolerate any abuse across the chamber. So, I will start calling at any stage. We have listened to it quietly and we will continue to do so.

Ms M.M. QUIRK: The Parliament does not do its work if the institutions of the state are not held to strict account, particularly when there are suggestions of partiality or bias.

MR I.M. BRITZA (Morley) [10.24 am]: In accordance with the terms of reference —

Mr P.B. Watson interjected.

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The ACTING SPEAKER: Excuse me! Member for Albany, I said very clearly that I will not tolerate it, so I call you for the first time. I did not see what the Premier did, and if I had seen it, I would have done that. Thank you very much. I will not tolerate any interjections across the chamber.

Mr I.M. BRITZA: In accordance with the terms of reference, the committee's primary responsibility was to find out whether the police had treated the member of Parliament more favourably than any other citizen would have been treated in the same circumstances. I do not believe that it was the committee's responsibility to drive an inquiry into what might or might not have happened. Although the committee was well aware of what the community at large was thinking and even asking, it was the committee's sole responsibility to simply find out whether the police, in the course of their response and subsequent investigation, did anything that might have given the slightest perception that a member of Parliament had been given special favours not given to an ordinary citizen. It was, and still is, my primary view that the police, in all of its capacity and ability to respond, did so with the utmost professionalism. The response of the police to the initial call was exemplary and they followed to the letter of the law, in my opinion, all that was required of them to accomplish that and to report the matter. Their report went into their system, as do all reports of this nature, and would have been further investigated when the report was read in more detail in due course. After the member of Parliament's name was publicly revealed, more vigour was certainly thrown into the investigative process, and all aspects of the matter were looked at more carefully from the first phone call until the completion of the final report. However, until the member's name was revealed to the relevant authority, the initial report on the matter by the police had received its due course of action. Any further matters dealing with the information technology made available to the police, or the registration of members' names with the appropriate information attached to that register, had no impact on the fact that the police acted with absolute impartiality in the matter presented to them on the evening in question, and proceeded with their course of action in every manner to which they had been completely trained to fulfil. These matters, if dealt with, can only enhance and even further the ability of the police to pursue their areas of responsibility with an even greater degree of impartiality, accountability and desire to protect, shield and defend the public at large.

I need to just briefly state that although the committee did in fact agree to obtain the State Solicitor's report, I held personal reservations that I declared at the time about not only the legality of what we finally agreed on, but also whether it was a precedent worth pursuing. Hindsight is a wonderful thing but, as I said in my inaugural speech, it is easy to do justice, but so very difficult to do right. If names of people were in fact shown on our website without their approval, then I need to state categorically here in the chamber that I believe it was wrong to do so. The perceived, or not perceived, actions of the member involved were completely irrelevant to the terms of reference that the committee gave itself, and I believe that the committee may have gone a little beyond its own terms of reference in order to achieve another result and possible outcome.

I need to acknowledge at this time the outstanding effort and wonderful support given to the committee by the committee staff headed by the Principal Research Officer, Dr Sarah Palmer, and her assistant, Ms Niamh Corbett. Therefore, it is with a great deal of reticence that I, as deputy chair of this committee, tender this report of mine as a minority report.

MR M.P. MURRAY (Collie–Preston) [10.28 am]: I rise to support the Community Development and Justice Standing Committee review of a police investigation into the traffic incident involving a member of Parliament for which the terms of reference were approved by this house. First, I thank the staff, Dr Sarah Palmer and Ms Niamh Corbett, for their efforts in having this report drafted and completed. I also want to commend the chair of our committee, the member for Girrawheen, for her direction using her experience from another time to guide us through the protocols along with the processes of the police department. May I say from the outset that although members of government have branded this review a political witch-hunt, I do not agree. The facts are that we all knew who the village idiot driving the car was. It was a process that was under scrutiny.

Withdrawal of Remark

Mr C.J. BARNETT: Although that is a committee report, that is clearly inappropriate in this house.

Several members interjected.

The ACTING SPEAKER (Ms J.M. Freeman): There is a point of order. I will not tolerate any debate during this process. Minister for Health, I call you for the first time.

Member for Collie–Preston, when we refer to members in this place we refer to them by their seat as we would you. I ask you to withdraw that.

Mr C.D. HATTON: I have a point of order. The terms of reference and discussion around the terms of reference for that review said that the person involved in the incident would be termed as “the member” or “the member for Vasse” and I do not believe this is appropriate.

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Mrs M.H. Roberts interjected.

The ACTING SPEAKER: Excuse me! I am perfectly capable of making a determination. That is the same point of order. I am ruling on that point of order, thank you, member for Balcatta.

Member for Collie–Preston, please withdraw that and refer to the member as the member’s seat or the member. Thank you. Can you withdraw that please?

Mr M.P. MURRAY: I withdraw. Let me find my lines, please.

Several members interjected.

The ACTING SPEAKER: Excuse me!

Mr M.P. MURRAY: Am I right to go?

The ACTING SPEAKER: Absolutely, member for Collie–Preston. Please proceed.

Mr M.P. MURRAY: Thank you. I withdraw the words “village idiot” and in place I will say the member for Vasse acted like a village idiot while he was driving the car. The process was under scrutiny.

Mr C.D. HATTON: That is still inappropriate language in this chamber.

Several members interjected.

The ACTING SPEAKER: Excuse me! I will not tolerate interjections.

Mr C.D. HATTON: It is not appropriate to the terms of reference and the agenda for the review.

The ACTING SPEAKER: Member for Collie–Preston, on the basis I asked you to withdraw your remarks, just withdraw them and proceed on the basis of calling him “the member”. I thank you for your consideration in this. I ask you to just proceed. Please withdraw the remarks again and proceed with the words “the member”. Do not try to reintroduce the remarks in another way at this point of time. I understand what is going on here; please just withdraw and proceed just with the member’s seat name.

Mr M.P. MURRAY: I think I have got it. I withdraw and instead will refer to the member for Vasse. Is that what you are saying, Madam Acting Speaker?

The ACTING SPEAKER: Yes.

Debate Resumed

Mr M.P. MURRAY: The process was under scrutiny. To my thinking there were many gaps in this process. One of my areas of concern was very much focused on what charges were laid and why other charges were not laid and whether they gave an advantage to a member of Parliament. Another concern that arises out of this report is the police view that because the car’s steering was damaged, that potentially may have caused further accidents. I always thought that driving an unroadworthy vehicle was an offence and that continuing to do so would be, or should be, considered dangerous. Another alarming issue was the assumption that the member’s driving slowly influenced the police to bring a charge of careless rather than dangerous driving.

A side issue that came to light was the role of the dignitary protection unit. Members of Parliament have little information about that. My staff are covered by local security contractors, not the dignitary protection unit. If that is the case, why has this unit not been wound up?

Some would say the report goes too far but we must remember this is a report of and to the Parliament based on extensive research. Although I acknowledge the minority reports tabled, one can only wonder what happened to the members who tabled these reports. They contributed to the robust discussions and put forward their positions. However, in the last couple of weeks of discussions they tried to walk away from the report. I can only wonder where the political bias came from in their reports. It looks to me as though they were leant on to protect a political mate. The report is thorough and forthright.

Several members interjected.

The ACTING SPEAKER: Members!

Mr M.P. MURRAY: I commend the report to the house.

MR C.D. HATTON (Balcatta) [10.35 am]: I submit this minority report in order to address what I believe to be quite significant omissions, broad assumptions and incorrect conclusions. This minority report is submitted with due consideration to the terms of reference and the intent of the agency review.

The committee’s primary responsibility was to find out whether or not Western Australia Police treated the member of Parliament more favourably than any other citizen would have been treated in the same circumstances and whether police procedures and operations were appropriate. The review was driven by an awareness that there was a degree of public concern about the integrity of the investigation and the subsequent

charges and court conviction. However, throughout the review it became apparent to me that there was a level of disparity between the review's intent and the conduct of the review. I believe that parts of the review strayed from the terms of reference and, instead, became more focused on the assumption that the police investigation was inadequate in that it did not pursue a different charge or conviction. In effect, I believe that a degree of partiality was demonstrated and that this led to some evidence being considered in a manner that was contrary to the terms of reference. It is my view that the police acted within their capacity and ability to respond and investigate, doing so with the utmost professionalism.

Throughout the review it became apparent that WA Police responded appropriately to the site of the incident, professionally investigated the incident, conducted forensic analysis and sought to prosecute an appropriate charge based upon the available evidence. In accordance with the committee, I do not believe that the police investigation treated the member more leniently due to a position of high office and standing. In fact, greater investigative diligence may have been applied due to the probability of greater public scrutiny. Although it could be considered by some people that the police investigation could have been compromised by some government influence, there was no evidence at all to support this assumption. In relation to an assumption that the incident was as a result of drink-driving, the comprehensive police investigation was unable to support that assumption. However, while I strongly acknowledge, along with the committee, that drink-driving is serious and should result in a drink-driving charge and conviction, the evidence surrounding this incident could not be supportive of that charge or conviction.

At this point I raise my concern that, as a committee, we agreed to obtain the State Solicitor's report. I held personal reservation about this procedure at the time, with concern about the legality of such an action. However, in the pursuit of evidence, the action was taken. On reflection, I continue to hold reservations, with a particular concern for any people whose name may have entered the public domain. I submit this report with the view that the committee and review was compromised by a level of partiality and bias.

With reference to the committee review, I have been unable to reach agreement on a number of wordings, findings and conclusions. I therefore dissent from one finding, two conclusions and four wordings and sentences that I have outlined in an appendix to the minority report. For the purpose of the minority report presentation in this chamber today, I present the two conclusions that I arrived at and that I believe contain important public information that should be transparent. However, I say again that significant omissions, broad assumptions and incorrect conclusions were evident to me during, and resulting from, this review.

I say again that the police acted within their capacity and ability to respond and investigate, and did so with the utmost professionalism. I dissent from the committee report's conclusion at paragraph 2.3.2 on page 27 "In conclusion" on the basis that it aims to levitate the gravity of the incident without giving due consideration to the evidence at hand and the scope of charges. As set out in my minority report, I contend that the conclusion should read —

'The prosecution advice prepared by the State Solicitor's Office, while sound, is based on the limited powers of the police to be able to gain evidence and is also based on the understanding that erratic driving can be caused by other factors such as ill health, medical condition or mechanical failure —

Several members interjected.

The ACTING SPEAKER: I told people that I would not tolerate any interjections. They came from a broad range of members, but unfortunately, member for Warnbro, you were the last one on the list, so you are called.

Mr C.D. HATTON: I am stating here the evidence that was put forward to me, and I will continue —

... is also based on the understanding that erratic driving can be caused by other factors such as ill health, medical condition or mechanical failure of a vehicle. When considering the possibility of other causative factors, combined with limited available evidence, the prosecution assumed the position that a lesser charge would be judged.

The Committee notes that a number of previous traffic infringement notices logged against the Member for Vasse were not on police records to be potentially used for prosecution, or accessible in the police system.'

In relation to section 2.5, p. 29, concluding comments, I dissent from this conclusion.

I conclude that:

The Committee accepts that the WA Police responded to the reported incident well within the key performance indicator response time.

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The Committee also accepts that the incident scene was adequately investigated, although for a relatively short time, giving consideration that it was dark and the reported location was unable to be safely investigated to another level.

It became evident to the committee that the police investigation and the gathering of evidence was limited by the reduced capacity of the somewhat out-dated computer aided dispatch (CAD) system, being limited in its ability to integrate and link information.

A new updated integrated system is being commissioned; however, there should not be the assumption that if the new system was already in place, there would have been a different judicial outcome related to this incident.

Subsequent, post incident investigation was conducted according to a collection of new emerging evidence, including public reports of damage to other vehicles.

Comprehensive forensic evidence was gathered, including evidence that the offender's vehicle's steering mechanism was most likely significantly damaged on an initial impact.

Several members interjected.

Mr C.D. HATTON: Let me finish.

Mr M.P. Murray interjected.

The ACTING SPEAKER: Member for Collie–Preston, honestly, I have made it very clear, so let us not have interjections. I call you for the first time.

Mr C.D. HATTON: I continue quoting —

It was determined that damage affected the roadworthiness of the offender's vehicle, rendering it difficult to control.

The prosecution advice prepared by the State Solicitor's Office was sound and, based upon the available limited evidence, more serious charges were not pursued.

The resulting (perceived) lesser conviction was a judicial outcome based upon the reasoning that causations other than alcohol could very well have taken a place in the incident, such as erratic driving caused by other factors and a damaged and compromised steering mechanism due to an initial impact during the incident.

Mr M.P. Murray interjected.

The ACTING SPEAKER: Member for Collie–Preston!

Mr C.D. HATTON: I will take a pause here and state that this is the evidence that was given in the review agenda; this is not something I have assumed. I continue —

The convictions were reflective of the evidence at hand resulting from a comprehensive police investigation, the limitations of the law and the fact that the offender drove carelessly on the evening, failed to stop and failed to report a crash.

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Member for Butler, I call you for the first time.

Mr C.D. HATTON: To go on —

The Committee does not believe that the police investigations treated the offender more leniently due to a position of high public office and standing. In fact, greater investigative diligence may have been applied due to the probability of greater public scrutiny.

Although it could be considered by some people that the police investigation could have been compromised by some government influence, there was no evidence presented on this assumption.

In relation to an assumption that the incident was a result of drink driving, the comprehensive police investigation was unable to support that assumption.

Mr D.J. Kelly interjected.

The ACTING SPEAKER: Member for Bassendean, I call you for the first time.

Mr C.D. HATTON: My minority report continues —

While the Committee acknowledges the public concern that drink driving is serious and should result in a drink driving charge and conviction, the evidence surrounding this incident could not be supportive of that charge or conviction.

I would like to thank secretariat staff, Dr Sarah Palmer and Ms Niamh Corbett, for the wonderful work they have done and I acknowledge the other committee members.

DR A.D. BUTI (Armada) [10.46 am]: I also rise to contribute to the debate on the fifth report of the Community Development and Justice Standing Committee and I strongly support the majority report on the review of the police investigation into traffic incidents involving a member of Parliament. I strongly believe that the report and the inquiry remained within the terms of reference agreed to by all committee members at the commencement of the inquiry. I do not wish to spend any time rebutting the two minority reports, except to say that I particularly take offence at the assertion by the member for Balcatta that some members may have engaged in political bias; I do not believe that is the case and I think a fair reading of the report will show that not to be the case. I am also particularly distressed by that accusation because I think it casts aspersions on the professional staff, Dr Sarah Palmer and Ms Niamh Corbett, who were amazing in this inquiry. As the report states, and as the Chair—who led us in a very professional manner—said, we believe that the police acted for the majority of this inquiry in a professional manner and that they did not treat the member for Vasse any differently from other members of the public. Anyone taking the time to read this report will find that is what we found. Of course, as the Chair has mentioned, there were some inconsistencies in and some concerns about the police conduct and the gathering of evidence. If the conduct had been directed in a different manner and other evidence had been attained, different charges may have been laid. Of course, the police investigation was hampered, and it was hampered by the fact that the member for Vasse refused to provide police with a statement; he refused to engage in a police interview. As the chronology of events in the report show, a number of attempts were made by the police to contact the member for Vasse to ask him to engage in a police interview and he refused to do so. Therefore, of course, their ability to obtain evidence was severely hampered. The member for Vasse of course has a legal right to remain silent, as do all citizens of Western Australia; however, this severely hampered the investigation. In the evidence delivered on Monday, 19 May 2014—the hearing transcript—Dr O’Callaghan said in response to my question —

I certainly would agree that if people did participate in interviews it would make our job easier; I mean, that goes without saying.

He then went on to talk about the fact that in some cases the police do not have the right to remain silent. He stated —

Well, I am not going to get drawn into a debate about ministers of Parliament, but what I can tell you is from the Police Commissioner’s perspective, I think if the same standards were to apply to police officers, it would diminish public confidence in the police.

There he is referring to the fact that if the police were to remain silent, public confidence in the police would be diminished, and that is an issue that all of us here have to be concerned about—a former senior member of government remaining silent on an issue in which government property was damaged. Although the member for Vasse has a legal right to remain silent, in the end it will be up to the court of public opinion to decide whether it believes he has acted in an appropriate manner for a senior minister of Parliament in a scenario in which a number of vehicles were damaged and there was significant damage to government property, and when we have a government that has been running strongly on no drinking and driving. We have a government that runs on a very strong no drinking and driving campaign, but there was an implication that one of its senior ministers may have been intoxicated, and he refused to provide evidence to police. The police acted in a professional manner during the majority of the investigation; however, their ability to obtain evidence was severely hampered by the member for Vasse’s refusal to provide that evidence. As the Commissioner of Police said, if that happened with a police officer, it would diminish the public’s confidence in the police. I say that the member for Vasse’s refusal diminishes the public’s confidence in members of this house.

With regard to the issue of the charges that were laid, the police made a decision based on the evidence before them that certain charges would be laid, but not the charge of driving under the influence of alcohol. As I stated, their ability to obtain evidence was severely hampered by the continual refusal of the member for Vasse to engage in a police interview. It is very interesting that the member for Balcatta talked about possible other explanations for the driving conduct of the member for Vasse. Paragraph 2.3.2 of the Community Development and Justice Standing Committee’s report headed “In conclusion” reads —

The prosecution advice prepared by the SSO, while sound, is based on repeated assumptions regarding what will be accepted in court. It assumes that a court would be more willing to accept that the erratic driving was caused by a migraine or mechanical failure than by intoxication, and that it would be more

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willing to believe that the driver's inability to recall driving home was due to fatigue or stress rather than intoxication.

As members know, guilt in a criminal case has to be found beyond reasonable doubt. In a situation in which there is no forensic evidence in the form of a breathalyser test for alcohol consumption, circumstantial evidence becomes very important. As members know, time and again circumstantial evidence results in convictions in criminal cases. When we look at circumstantial evidence and beyond reasonable doubt, the rational inference has to be obtained by the evidence that is available. I will leave it up to the public to decide; indeed, I will gladly leave it up to the public to decide whether on the evidence that was available to the community and the police that the rational inference is that the member for Vasse was driving under the influence of alcohol or whether his erratic driving was due to a migraine, fatigue or stress. I strongly believe that the rational interpretation, or the rational inference beyond reasonable doubt, made by the public is that based on all the evidence available—the caterer at the wedding, the eyewitness accounts et cetera—the member for Vasse was driving under the influence of alcohol, not that his erratic driving was due to a migraine, fatigue or stress. That will be for the court of public opinion to decide.

Section 63 of the Road Traffic Act allows the prosecution to prosecute for driving under the influence without forensic evidence of a person's blood alcohol level. The Commissioner of Police inadvertently erred when citing the High Court case *Bunning v Cross* [1978] and said that the admission of a driver driving under the influence would not be sufficient for a successful prosecution. That is not the case. The ratio decidendi of that case did not deal with that; rather, it dealt with whether a police officer acted in a proper manner in requiring or requesting that a driver engage in a breathalyser test. It was not about an admission by the driver that he was driving under the influence that could result in a guilty conviction. In this case there would have been evidence from not only the driver, but also circumstantial evidence. I repeat: I will gladly leave this matter up to the court of public opinion to determine whether the majority report is reasonable within the terms of reference that was agreed to by all five members—without dissent— or whether they would prefer the report of the member for Morley or, more importantly, the report of the member for Balcatta.

This is a fair report. I commend the Chair in the way she led the inquiry hearing and the professional assistance of Dr Sarah Palmer and Ms Niamh Corbett.