

Privileges Committee

## **Citizen's Right of Reply (Mr D Kennedy) (No. 2)**

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## Terms of Reference

The inquiry was conducted in accordance with standing orders 202 and 203, which were adopted by the Legislative Council on 5 May 2004: *Minutes of the Proceedings of the Legislative Council*, No 52, Wednesday 5 May 2004, Entry No. 10.

## Committee Membership

The Hon Kaye Griffin MLC *Chair*

Australian Labor Party

The Hon Jenny Gardiner MLC *Deputy Chair*

Liberal Party

The Hon Greg Donnelly MLC

Australian Labor Party

The Hon Don Harwin MLC

Liberal Party

Revd The Hon Fred Nile MLC

Christian Democratic Party (Fred Nile Group)

The Hon Mick Veitch MLC

Australian Labor Party

The Hon Ian West MLC

Australian Labor Party

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## Report

- 1.1 On 17 February 2010, the President of the Legislative Council, the Honourable Amanda Fazio MLC, received a submission from Mr Duncan Kennedy requesting the incorporation of a response under standing orders 202 and 203 of the Legislative Council relating to the protection of persons referred to in the Legislative Council.
- 1.2 The submission referred to statements made by the Minister for Police, the Hon Michael Daley MP, in the answer to Question Number 3667 submitted by Dr John Kaye MLC in the Legislative Council on 22 September 2009.<sup>1</sup> The President, having considered the submission under standing order 202(2), referred it to the Privileges Committee on 18 February 2010.
- 1.3 The Committee met in private session on 11 March 2010, and decided, according to standing order 203, to consider the submission. The response, which the Committee now recommends for incorporation in *Hansard*, has been agreed to by Mr Kennedy and the Committee in accordance with standing order 203(4)(b).
- 1.4 The Committee draws attention to standing order 203(3)(b) which requires that, in considering a submission under the resolution, the Committee must not consider or judge the truth of any statements made in the House or in the submission.
- 1.5 The Committee recommends:

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### Recommendation 1

That a response by Mr Kennedy, in the terms specified at Appendix 1, as agreed to by Mr Kennedy and the Committee, be incorporated in *Hansard*.

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The Hon. Jenny Gardiner MLC  
Deputy Chair

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<sup>1</sup> *Questions and Answers Paper*, No. 116, 22 September 2009, p. 4039. The answer was published in *Questions and Answers Paper* No. 122, 27 October 2009, p. 4311.





## **Appendix 1**

**Response by Mr Kennedy,  
agreed to by Mr Kennedy  
and the Committee,  
according to standing order  
203(4)(b)**

## Appendix 1

### **Reply to the answer given by the Minister for Police, the Hon Michael Daley MP, to Question Number 3667 submitted by Dr John Kaye in the Legislative Council on 22 September 2009**

I write to seek a Citizen's Right of Reply under standing orders 202 and 203 in respect to the answer given by the Minister for Police, the Hon Michael Daley MP, to Question No. 3667 on 27 October 2009 submitted by Dr John Kaye MLC in the Legislative Council on 22 September 2009. I request that this letter be read into the Parliamentary record.

Question 3667 referred to me by name, suburb and former profession, and the Minister's response made it clear that he was referring to me in his answer.

As a former highly respected licensed security consultant (under New South Wales security industry legislation), I have conducted some 16,000 site security inspections (an estimated 1,000 or so of those after an illegal entry had been perpetrated), and a further 500 or more site security inspections of bank branches (an estimated 200 of those after a preventable armed hold-up). I have done security works on the homes of three Prime Ministers and a number of Federal Ministers, on the homes of judges and magistrates and those under witness protection, and even on the homes of a couple of ICAC Commissioners and a couple of Police Commissioners, and of course significant security works at most of the Defence Force bases in New South Wales. I have even provided barrier security advice to the likes of the Federal Government's Attorney General's Department.

Accordingly, I find the Minister's dismissal of the serious issues involved in Dr Kaye's question and, by extension his dismissal of the plight of the victims and the potential victims, comprising a very broad spectrum of the citizens of New South Wales, highly offensive.

The Minister's response states 'Mr Kennedy's concerns are well known due to his extreme correspondence on this issue over many years'. I believe this remark may denigrate me in the eyes of members of the Legislative Council before whom I am endeavoring to have my allegations addressed.

It would be appropriate at this stage to draw your attention to my previously published and related Report No. 44 entitled "Citizen's Right of Reply (Mr D Kennedy)", dated June 2008, which involved an answer to Question No. 0224 given in the Parliament by the then Minister for Fair Trading, the Hon Linda Burney MP. That question, and now Question No. 3667, were both asked by Dr John Kaye and both related to the administration of New South Wales security industry legislation.

During December 2009, the Department of Fair Trading amended their Home Building licensing website, thereby acknowledging the very basis of my many submissions over the years.

I am a reasonably well informed member of the electorate with a social conscience, and so I find it absolutely beyond belief that the Minister in his answer to part 2 of the question accepts the refusal of 'the many oversight organizations' to investigate my allegations of extremely serious white collar criminality against the upper echelons of the New South Wales Government.

Minister Daley refers in his answer to Mr Kennedy's "concerns" when he is well aware that in fact I have made allegations of significant criminality.

The Police Department will investigate and prosecute those they allege may have knowledge of a crime and do not come forward to report it. Yet when I come forward with the most serious of allegations against the Government the Minister believes the authorities should be able to reserve the right not to investigate.

In regard to Minister Daley's reference to the Ombudsman, I have a letter from the New South Wales Ombudsman, dated 14 July 2008 (Ref C/2008/5226), advising that the *Ombudsman Act 1974* prevented him from investigating my allegations.

I also dispute Minister Daley's reference to the Police Integrity Commission. I refer to a letter from the Police Integrity Commission, dated 9 December 2003 (Ref 11984/13) and signed by the Commissioner, advising that he would not be investigating my complaint 'because, compared with other matters under consideration and investigation, your complaint did not achieve the priority necessary for the Commission to commence an investigation. This is because your complaint deals mainly with issues related to police inaction'. Nothing could be further from the truth.

One of the reasons that was given to me by ICAC for refusing to investigate one of my allegations of serious criminality was that 'ICAC were not there to interpret the law', dated 1 May 2009 (ICAC Ref E0910305). And then ICAC go off and investigate the Roger Training Academy, the Security Industry Regulation and an estimated \$1.3 million of transactions. That investigation must surely have involved ICAC's interpretation of the Security Industry Regulation.

Minister Daley's response to part 4 of the question reads 'All necessary actions will be taken by police to ensure security industry requirements are met by licence holders'. He doesn't mention the hundreds of firms operating illegally without a licence.

Surely it stands to reason that had the estimated \$2 billion to \$5 billion of illegal, unlicensed, and probably criminal security works been done in accordance with the requirements of the relevant Security Industry Acts, that in turn would lead to a reduction in break and enter, which in turn would mean so much less police manpower required to respond to and investigate those break and enters, and this in turn would equate to many more police officers becoming available to patrol the streets or violent areas, like the streets of Sydney for example.

On 3 August 2006, in response to an advertisement in the Sun-Herald on Sunday 16 July 2006 calling for submissions on the Regulatory Impact Statement and the proposed re-write of the Security Industry Regulation, I made a twenty page submission to the Police Policy Unit, which I copied personally to the Commissioner Ken Moroney and personally to the then Police Minister Carl Scully (both on 7 August 2006). I listed as an example of the extent of the problem across the State some twenty five local firms (and that equated to over 95% of those businesses in the area), who were carrying out works defined under the Security Industry legislation without the required Police Security Industry licences. Not only are those same firms still not licensed, but the number of illegal contractors in the area has increased. Why? In October 2006 I rang the Police Policy Unit to follow up on my submission and was told they 'didn't have time to read a twenty page submission' and 'in any event I was a known troublemaker and so they would not be considering my submission'.

I have tried to bring to the attention of the Police, former Police Ministers and the Government that significant security works at important public infrastructure have been done illegally using unlicensed contractors and unlicensed employees. They just don't want to know about it.

There are hardware stores illegally selling security driving devices to provide access into the likes of the maximum security wing of Goulburn Jail (the plans went across my desk) and into the magazines of the Orchard Hills Missile Base (my firm did the security). There are also multi-million dollar advertising campaigns for a particular type of security product that clearly breaches both NSW Fair Trading Legislation and section 33 of the *Security Industry Act 1997* (Misrepresentation and Related Offences).

Minister Daley's response overall is misleading and I believe he ought to have had the commonsense to further question the answer that may have been provided to him.

I fully appreciate the gravity of the matters that I have put before you but I honestly believe that the Parliament and the electorate are entitled to have these matters investigated and Minister Daley's answers to the Parliament in this regard challenged.

Many of the allegations of criminality referred to above were made publicly before the Federal Government's Legislative and Constitutional Affairs Committee investigating Crime in the Community in 2003 (refer to Submissions Nos 133 to 133.6). They are still unresolved.

I reiterated in my Report No. 44, dated June 2008, that those allegations of criminality were still outstanding and still no one in the Government has reacted.

I thank your Committee for allowing me to put forward my point of view in regard to these disparaging remarks made by various Ministers.