

## **CORRUPTION AND CRIME COMMISSION DEATH OF A WITNESS**

On 7<sup>th</sup> September 2010, a witness summons to appear before a public hearing of the Corruption and Crime Commission, committed suicide.

On 10 September the Commissioner of the Corruption and Crime Commission issued a press statement announcing the death of the witness.

On 15 September the Joint Standing Committee on the Corruption and Crime Commission issued a formal reference to the Parliamentary Inspector, Christopher Steytler QC seeking an investigation into what the CCC knew about the circumstances of the matter prior to the man's death however the Committee asked for no expression of opinion, finding, recommendations, assessment or view.

On 28 September, the Joint Standing Committee expanded its terms of reference requesting the Parliamentary Inspector to *express "any opinion, finding, recommendation, assessment or view"* he may arrive at.

On 11 October the Parliamentary Inspector provided the Joint standing Committee with his Report (*Response by the Parliamentary Inspector to the Reference from the Joint Standing Committee of the Corruption and Crime Commission dated 15 September 2010*) which the Committee subsequently renamed as his *"Initial Report"*

On 24 February 2011, after providing the CCC with several opportunities to consider and comment upon the Parliamentary Inspector's Report and its own Report, the Joint Standing Committee tabled its Report which rather than attaching the full Report of the Parliamentary Inspector, incorporated Mr Steytler's Report into its own in the form of references to it and quotes from it. The full Report is not published.

Meetings between the Committee, CCC and the Parliamentary Inspector were all held in private and their proceedings have not been published.

Equally, the Committee has declined to disclose either its correspondence with the CCC on the matter or the CCC's replies to that correspondence. Limited and selected quotes are included in the Committee's report. Further, correspondence between the Inspector and the CCC is referred to briefly in the Report but the full correspondence is not publicly disclosed.

The Report disclosed that the CCC had learned, through covert surveillance that the man had checked his life insurance policy, made inquiries about purchasing a scalpel and visited suicide websites.

The Parliamentary Inspector was critical of the manner in which the CCC dealt with the information it had obtained about the witness's actions in respect to his behaviour leading up to his suicide.

The Parliamentary Inspector found that the CCC, having obtained certain information which indicated he may commit suicide should have postponed the public hearing or converted it to a private hearing and notified the witness immediately.

The Parliamentary Inspector was also critical of the manner and circumstances in which the CCC notified the wife of the witness's actions leading up to the suicide.

The CCC has maintained that the death of the witness was not caused by the witness fearing the publicity of a public hearing but by his fear of having his assets confiscated and of the prospect of being jailed.

In spite of a long, detailed and particularly well reasoned explanation by the Parliamentary Inspector for his findings, the Joint Committee dismissed the conclusions arrived at by the Inspector and effectively joined the CCC in stating that *"the Committee's view differs from that of the Parliamentary Inspector on the basis that there was no direct evidence that the witness feared the publicity of a public examination. It cannot therefore be said, in the Committee's view, that it was manifestly unreasonable for the Commissioner to have proceeded with the public hearing"*.

The conduct of the Committee and its finding have attracted criticism from both within the media and the Parliament. The Shadow Attorney General in discussing the Committee in the media, repeated what he had previously said about the Committee. He claimed it was *"no more than a cheer squad for the CCC"*.

Journalist and radio presenter, Paul Murray in an article in the 'West Australian' newspaper was highly critical of the Committee and its Report. Murray wrote *"Unfortunately, the watchdog set up by the WA Parliament, the Joint Standing Committee on the CCC, exonerated the commission in a report that is so tortured in its reasoning that it has compounded the initial outrage."*

*In excusing the CCC, the committee swept aside the explicitly contrary view of its Parliamentary Inspector, former Supreme Court Justice, Chris Steytler. The Committee has not published the Inspector's report in full, a fact that suggests perhaps something troubling occurred in arriving at its own conclusions.*

*The committee's report discloses a number of secret meetings with the inspector over his inquiry which now that some of Mr Steytler's views are public, gives rise to important questions about their relationship.*

*The parliamentary committee has failed abysmally in its duty to the public, dashing any faint hope that politicians might protect citizens from the abuse of the CCC's powers".*

The manner of the conduct of the Joint Committee and its findings raise a number of serious issues which in some part reflect the procedures of the Committee in past references.

The Joint Standing Committee on the Corruption and Crime Commission was created by the Parliament because the Parliament was acutely aware of the invasive and unprecedented powers that it was giving to the CCC, powers which extend to suspending the intrinsic rights of all citizens and striking at the rule of law.

To provide a vigilant protection for the people whom it represents, the Western Australian Parliament created an oversight committee charged with monitoring the exercise of these functions and reporting on their findings to the Parliament.

Committees' of the Parliament, not least those which are duty bound to monitor, scrutinize and view with a healthy questioning and suspicious eye, bodies invested with extraordinary powers which trample on centuries of established citizens rights, that are the golden thread of orderly and civilized societies, have a great burden of responsibility to the Parliament and the public they serve.

Committees of the parliament should not set aside the unassailable and enduring principle of western democratic parliaments for transparency and openness of their proceedings and deliberations unless compelling reasons to the contrary arise.

The attached document attempts to address some of the matters outlined not only in respect to this report but in respect to the general operation of this Joint Standing Committee.

- It sets out the circumstances of the notification by the CCC of the death of the witness;
- the reference of the witness's death to the Parliamentary Inspector and its initial failure in that reference to require of the Parliamentary Inspector that he include in his Report, *"any opinion, finding, recommendation, assessment or view the Parliamentary Inspector thought it appropriate to make "* and, *if the Parliamentary Inspector thought it appropriate, "to include the same in the Parliamentary Inspector's first or any subsequent report to the Committee."*;
- the manner and process used to arrive at the content of the Report;
- the failure of the Committee to table in the Parliament, the full and complete Report of the Parliamentary Inspector and the general question of Reports of the Parliamentary Inspector being provided to the Committee rather than to the Parliament;
- an analysis of the Committee Report and its findings;

- a critique of the conduct and judgment of the CCC in dealing with the witness, together with the failings of the CCC to obtain medical advice as to the state of mind of the witness and the potential consequences of that state;
- some history of the adverse effect and consequences of people subject to the glare of public scrutiny within and without public judicial examinations;
- CCC press statement issued following public criticism of the conduct of the CCC in this matter;
- the general question of CCC public hearings;
- Joint Standing Committee hearings and the Committee's attitude to accepting oral evidence from members of the public;
- the fallibility of the CCC and the consequence upon the public of its failings;
- a perceived relationship between the Joint Standing Committee and the CCC.

## DEATH OF A CORRUPTION AND CRIME COMMISSION WITNESS

On either 7 or 8 September 2010, a person who had been summoned for public examination before the CCC, committed suicide.

On 10 September 2010 Commissioner Len Roberts-Smith issued a press statement which stated inter alia that:

*"Eight days before his death, the Commission informed the witness' immediate family and his employer of its concerns for his welfare.*

*"While this compromised some aspects of the Commission's investigation, it regarded the witness' welfare as more important.*

The manner and circumstances in which the Commission informed the *"immediate family"* is set out in this document. Whether the Commission which refused to cancel the public examination of the witness or convert it to a private hearing prior to his death in spite of obtaining information which indicated he may commit suicide *"regarded the witness's welfare as more important"* is amongst other things, also considered.

How notifying the *"witness's immediate family"* *"compromised some aspects of the Commission's investigation"* is not explained in the Committee Report.

On 15 September 2010, the Joint Parliamentary Standing Committee on the Corruption and Crime requested that the Parliamentary Inspector investigate the circumstances known to the CCC regarding the suicide of the witness.

The Parliamentary Inspector is Christopher Steytler QC, a former President of the Court of Appeals Division of the Supreme Court of Western Australia.

The Committee's terms of reference to the Parliamentary Inspector were as follow:

*The Committee desires to be informed of.*

- *the circumstances pertaining to the witness's death as known to the CCC;*
- *how the CCC became concerned as to the welfare of the witness; and*
- *what the CCC did as a result of those concerns, including an assessment of any harm prevention protocols that the CCC may have in place.*

It was not until 15 days later that the Committee expanded its terms of reference by asking the Parliamentary Inspector to also express *"any opinion, finding, recommendation, assessment or view the Parliamentary Inspector thought it appropriate to make "* and, *if the Parliamentary Inspector thought it appropriate, "to include the same in the Parliamentary Inspector's first or any subsequent report to the Committee."*

The wording of the Chairman's Forward to its report is unfortunate.

*"This tragedy raises a number of important issues that should not be ignored given the possibility that an analogous situation may arise again ".*

Given the tragedy of this suicide, the clear signs of its likely immanence and the events involving the CCC leading up to it, one might have expected the Chairman's commentary on this tragedy to have finished with the word "ignored". The Chairman's expressed view that the matter should not be ignored only because of "the possibility that an analogous situation may arise again" is a regrettable approach to the consideration of the death of this witness.

A disturbing revelation disclosed in the Chairman's Forward is the fact that the Report of the Committee does not contain the complete Report of the Parliamentary Inspector. It is at best a sanitized version with the Inspector's Report itself hidden from public view.

In at least one instance the apparent cutting and pasting of the Inspector's Report leaves the Committee Report incoherent. At page 21 of the Report the Inspector is quoted as saying:

*"I will not repeat what I have said concerning the weighing of the benefits of public exposure against the potential, for prejudice. However, I should add that the benefits referred to by the Commissioner... to the extent that they had not already been achieved as a consequence of the Inquiry into the Department of Health, were achievable, in due course, through the publication of a report ".*

This is the first and only reference to the *Inquiry of the Department of Health* and its relevance, context and significance are entirely obscured from the reader.

We are informed that *the Parliamentary Inspector has confirmed that this Report contains an accurate account of his findings, analysis and recommendations ".* What we are not assured is that it discloses the nuances, strength of views and the robust manner in which the Inspector expressed himself. No explanation is given as to why the public should be denied the full Report by the Inspector into the death of a witness which was apparently caused by a CCC inquiry.

There is no suggestion in the Report that the Parliamentary Inspector requested his Report be suppressed. The question left hanging is in whose interest is it that the Report be sanitized?

In a further censoring of material the Committee has failed to publish correspondence between the Committee and the CCC on a matter of very considerable importance.

The Report informs the reader that "by letter dated 13 December 2010 the Committee requested the CCC to advise what lessons have been learned from this matter [the death of the witness] and what changes have or will be made to CCC procedures and practices. In its

letter, the Committee referred to the possibility of suicide assessment training for CCC staff’.

The essence of the CCC reply was that the most appropriate role for the CCC is to intervene when the view is formed it is necessary to do so, and by notifying appropriate people to get help in an attempt to ensure the individual in crisis gets appropriate medical and/or professional assistance. It is more realistic, the CCC says, for the CCC to encourage individuals to contact professionals who are specifically trained.

There is no proper reason why the correspondence between the two bodies should not be made public and no reason given.

In respect to the manner of the content of the Report, the Report discloses that the Parliamentary Inspector prepared a Report. That Report was then provided to the CCC so as to give the Commission an opportunity to respond: that the CCC did. That should have been the end of the matter with the Committee then tabling the Report with any comments of its own; that was not to be the case. Rather the following tortuous process was followed and to whose if any and what if any benefit the reader can judge.

On 8 December 2010 the Committee convened a closed hearing attended by the Parliamentary Inspector to discuss his Report.

#### **Committee seeks CCC feedback**

By letter dated 13 December 2010 the Committee provided a copy of the Report to the CCC, and by letter dated 28 January 2011 the CCC provided its comments concerning the Report to the Committee. These comments were in addition to the CCC's representations that the CCC had already made to the Parliamentary Inspector.

#### **Closed hearings with the Parliamentary Inspector**

On 2 February 2011 the Committee convened a closed hearing attended by the Parliamentary Inspector to discuss the response of the CCC. In that meeting, the Parliamentary Inspector offered to clarify a section of the Report, which was received by the Committee on 4 February 2011.

The Committee then provided a further revised draft of its proposed report to both the Parliamentary Inspector and to the CCC on 9 February 2011. and asked both parties to provide comments.

These comments were received on 14 February 2011 and then the Committee convened another closed hearing attended by the Parliamentary Inspector on 16 February 2011 in which the received comments were considered. As a result of this hearing, the Committee provided a final draft of its proposed report to both the Parliamentary Inspector and to the CCC on 17 February 2011, prior to this report being tabled on 24 February 2011.

#### **PARLIAMENTARY INSPECTOR’S REPORT NOT TABLED IN PARLIAMENT**

What is disconcerting about the fact that the Committee has refused to table the Parliamentary Inspector’s Report as a stand alone unabridged document with the gravitas, untrammelled integrity and standing that such a Report deserves rather than one which has

been taken by the Committee and filtered and subsumed into the Committee's Report, is the fact that such a course contradicts what appears to be the position taken by the Parliamentary Inspector in evidence previously given before the Committee and from which there was at the time no demur by any members of the Committee.

The following is an extract of a transcript of evidence of a public hearing conducted by the Joint Standing Committee on the Corruption and Crime Commission on 25 November 2009.

**Chairman:** *"I draw to your attention some comments made by Hon Adele Farina in the Legislative Council on 13 August, who said as follows —*

*The parliamentary inspector is now to lodge the reports with the Committee and the committee then provides a report to the house—that is fine— She was, of course, referring to a previous report that had been filed in Parliament by our office when we indicated there was an understanding between the inspector's office and the committee that, as much as possible, the Inspector would file reports to Parliament via our committee.*

*She goes on to say —*

*but we are now in a position where this House does not actually see, or may not see, the parliamentary inspector's reports. I am somewhat concerned about that because I think that this House should be able to view the Parliamentary Inspector's reports. If there are matters of confidentiality or procedural concerns that the CCC has, those sections of the report can be edited and names can be deleted, if there are individuals. Names that need to be deleted.*

*It just seems to me that we are in a position now where Parliament is no longer having access to the Parliamentary Inspector to report to the Parliament. I am concerned about this change of events, which has occurred without any amendment to legislation and without—I am not sure, and I am happy to be corrected—discussion in this House.*

*In light of those comments, Inspector, can you provide comment on because it seems a reasonable concern to be sharing with the House"?*

**Mr Steytler**

*"As to the comments made generally by Miss Farina, my position is very simple. If I believed that some issue on which I report should be made public then I would table the report in Parliament. I have no difficulty, as I have said previously, in placing it first before this Committee, but regardless of the views of the committee—I say that with the greatest respect—if I were to come to the conclusion that the matter was one of public interest, I would table it no matter what the recommendation of the Committee might be in that respect. I certainly see that as the function given to me under the act and as my ultimate responsibility".*

It may well be that insofar as his Report emanated from a request for a Report from the Joint Committee, the Inspector may have believed providing it to the Parliament through the



Committee may on this occasion be appropriate. Perhaps initially he had no idea it would lead to the course taken by the Committee.

The general question of referring Reports by the Parliamentary Inspector to the Joint Standing Committee first arose in late 2008 as a result of an attempt by the CCC to prevent Parliamentary Inspector, Malcolm McCusker AO QC, tabling a Report in the Parliament in which he made certain redeeming findings in respect to Mr Stephen Lee, the Mayor of the City of Cockburn, about whom the CCC had made adverse findings.

In an attempt to prevent Mr McCusker so doing, without advising Mr McCusker or the Parliamentary Committee, the CCC in a quite remarkable and some might say, bizarre act, sought an ex parte injunction to restrain him from doing so.

Martin CJ dismissed the application to restrain Mr McCusker from tabling his report.

Martin CJ made the following points in favour of deciding not to award the injunction:

- there was no justifiable reason for the CCC not to have informed Mr McCusker of the urgent application. For that reason alone, the Court did not grant the injunction;
- the Parliamentary Inspector is an officer of Parliament. The power which he purports to exercise and which the CCC would seek to restrain him from exercising is a power to report to Parliament. That raises serious questions as to the justiciability of the proceedings and a serious question as to whether these proceedings are within the jurisdiction of the Court, and, indeed, as to whether the commencement of the proceedings is, of itself, a contempt of Parliament;
- the appointment of Mr McCusker expired on 31 December 2008. It was reasonable to infer that any acting Parliamentary Inspector or replacement for Mr McCusker would require some considerable time to get to the point where they could have the same degree of confidence in the draft report as Mr McCusker presently enjoys; and
- Mr McCusker's proposed report would go some way towards addressing and perhaps restoring to some extent the reputation of Mr Lee in the light of the previously published report of the CCC. The injunction sought by the CCC would have an adverse impact upon Mr Lee. Mr Lee had not been served with notice of the proceedings, nor has he been given any opportunity to be heard in relation to them, nor had any undertaking as to damages proffered in order to protect Mr Lee from the adverse consequences of any order that the court might make.

The Parliamentary Inspector tabled his report on Mr Lee ('the PI Lee Report') with Parliament on 24 December 2008 via the mechanism provided by section 206 of the Act (transmitting a copy of his report to the Clerk of both Houses of Parliament).

Following this matter, the Committee undertook a reference:

to inquire into the respective functions, powers and responsibilities of:

- (1) the Corruption and Crime Commission (and its Commissioner); and
- (2) the Parliamentary Inspector, as they pertain to each other.

Rather than make a substantial recommendation that the Parliamentary Inspector was properly entitled to publish Reports which find in favour of those against whom adverse findings are made and if a legislative amendment is necessary to clarify that power, the Committee recommended that:

The CCC Act should be amended so that the Parliamentary Inspector is required to table his reports through the Committee, accompanied by a recommendation by the Parliamentary Inspector as to whether it is in the public interest to be tabled publicly in Parliament.

If the Committee has not tabled the Parliamentary Inspector's report in Parliament within 30 days, then, if the Parliamentary Inspector is of the belief that it is in the public interest to do so, the Parliamentary Inspector can proceed to table his report direct with Parliament without further consultation with the Committee.

Committee member, The Hon Ken Travers MLC, dissented from the recommendation and in doing so stated:

*"I am unable to agree with the comments in section 3.17 and the Committee's Recommendation 2, for the following reasons.*

*The Parliamentary Inspector is an independent officer of the Parliament with extensive powers who acts as a balance to the extraordinary powers provided to the CCC. The Committee has an important oversight role to ensure that these two powerful bodies are operating in accordance with the functions, powers and responsibilities granted to them under the CCC Act. It is important that the views of the Parliamentary Inspector are known to the Parliament and the public".*

*Any restriction on the ability of the views of the Parliamentary Inspector to be directly communicated to the Parliament may lead to reduced public confidence in the protections provided by the Parliamentary Inspector and a concern that the CCC may abuse its powers.*

*It could also lead to a perception of political inference. The current system works well when there is a strong degree of cooperation, even if not always in agreement, between the Parliamentary Inspector, the CCC and the Committee. It is my view that this cooperation has existed and continues to exist. The Parliamentary Inspector has tabled reports with the Committee in the past rather than directly with Parliament as currently allowed for under the CCC Act. On occasions when the Parliamentary Inspector has believed that it is appropriate to do so, he has tabled his reports direct with Parliament.*

*A further concern I have with any requirement that the Parliamentary Inspector can only table reports with the Committee is the situation where the Parliamentary Inspector for some reason lacks confidence in a member of the Committee and would not want to give them advance warning of his report prior to the report becoming public.*

*Finally there are a number of independent Parliamentary officers who report directly to Parliament, such as the Auditor General and the Commissioner for Young People and Children. Many of these officers have parliamentary committees with whom they maintain strong relationships to ensure they are fulfilling the expectations of Parliament. I see no reason for the Parliamentary Inspector to have a restriction place on him that is not placed on other similar officers. Therefore I cannot support the Committee's recommendation 2 and believe that the provisions in the current CCC Act are adequate".*

The Parliamentary Committee made a further recommendation under the heading of this reference in respect to filtering the Parliamentary Inspector's Reports to the Parliament through the Committee:

The CCC Act should be amended so that if Parliamentary Inspector intends to express an opinion that is adverse to a person or a body (including the CCC) and is likely to be made public, or in correspondence with a complainant, then the Parliamentary Inspector be required to provide the Committee with an advance draft copy of such an intended opinion, so as to afford the Committee a reasonable opportunity to consider the Parliamentary Inspector's intended actions.

Again the Hon Ken Travers dissented:

*"I believe it is important for the Parliamentary Inspector is seen to be an independent officer of the Parliament (see section 3.18). It is my view that mandating that the Parliamentary Inspector must provide all drafts of adverse opinions to the Committee will be seen as interfering with his independence. Further I believe it is important to develop a strong cooperative relationship between the Office of the Parliamentary Inspector and the Committee. I would encourage the Parliamentary Inspector to forward copies of all relevant correspondence (including the draft of the intended adverse opinion) to the Committee for its information, where he believes it is appropriate".*

As Mr McCusker said in the Allen matter (P 43) *"the CCC contention, that the Parliamentary Inspector (who is an "officer of the Parliament") cannot review and report on an adverse finding made in a CCC Report which it has tabled in the Parliament "including any factual errors, or inadequacy of the evidence relied on by the CCC to support the finding", is incorrect. That would mean that the power of the CCC to make and table findings of "misconduct" by any public officer, (with the serious consequences that follow) would be absolute and unchecked, and not subject to review and criticism by the Parliamentary Inspector. That is contrary to the intention of the Parliament, manifest both in sections 195 and 196 of the Act, and the Parliamentary debates on the CCC Bill.*

## **THE COMMITTEE REPORT**

Telecommunication intercepts disclosed that between March and July 2010 the witness had attempted to sell his assets and that he had been making inquiries about buying real estate in another State, to which State he proposed to move at Christmas. TI also revealed that he was anxious to protect his assets from confiscation.

Subsequently the witness learned that a number of people had been examined in private

hearings. Subsequent to that the witness changed his name and collected an application for a new passport. On the same day, someone at his home carried out a Google search on "gaol terms for fraud". On 9 August 2010 the witness was in the process of organising a \$500,000 bank loan.

None of these steps give the slightest indication that the witness is planning his suicide; quite the contrary.

On 20 August 2010, the witness was served with a summons to appear on 9 September 2010 at a public hearing to be conducted by the CCC.

Just three days later on 23 August the CCC learned from TI that the witness had made enquiries concerning the coverage afforded by his life insurance policy; on 24 and 25 August it learned the witness had tried to buy a scalpel from a pharmacy and during the evening of Friday 27 August and on Saturday 28 August, learned from TI that 'someone' in the witness's home had been using a computer to access a range of web sites concerning methods of committing suicide, including by cutting wrists. TI revealed that the witness was at home during the time the sites were being accessed.

The witness took these actions after receiving his summons.

The senior CCC Intelligence Analyst who was on 28 August informed of the access by the witness to suicide websites did not pass this information on to the Case Manager for the investigation or to anyone else. Remarkably the Committee Report states that *"It was not then known (as opposed or suspected) who, in the witness's household had been accessing the websites "*.

Amongst other things, the Parliamentary Inspector had the following to say:

*"[I]t seems to me that [the Analyst] should have appreciated, even without [knowledge of the prior information], that the overwhelming probability was that it was the witness who had been accessing the websites. If, when it was confirmed that it was the witness who had been accessing the websites, it was thought to be necessary for a report to be made, it is difficult to understand why this should not have been thought necessary merely because it was thought to be probable (as it must have been), rather than certain, that it was the witness who had been accessing the website. Either way, it should have been appreciated that there was a credible risk that the witness was contemplating suicide.*

*[...]*

*In my opinion, [the explanation offered by the Analyst] is unsustainable, even accepting that [the Analyst] did not know of the attempt to acquire a scalpel. The witness was known to have been in his home at the time that the sites were accessed. [The Analyst] knew that "*

In considering the following events and decisions by the CCC Commissioner and his senior officers, it is necessary to understand the process and procedures for the holding of private hearing and public hearings by the Commission.

The Parliamentary Inspector set out matters in his Report in the following terms:

*"It is relevant, in this respect, that s 139(1) of the CCC Act requires that, except as provided in s 140, an examination is not open to the public. Section 140(2) provides that the CCC 'may open an examination to the public if having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so'".*

*Given that the CCC had accepted that there was at least a realistic possibility that the witness was planning to commit suicide and given that it had, or should have, identified the possibility that a fear of publicity might have been a cause of this, it seems to me that, once this potential for prejudice was taken into account, it could not reasonably be concluded that it was in the public interest to open the scheduled examination to the public.*

*In any event, s 140(4) gives the CCC the power to close an examination for a particular purpose. There was consequently nothing to prevent it from conducting the examination of the witness in private and ordering that his name be suppressed in any subsequent hearings".*

At 7.30 am on 30 August 2010, the witness flew from Perth to Barrow Island where he worked for a company on a 'fly in/fly out basis.

By 8.00 am on that day the CCC had concluded that it was likely that the witness had been the person who had been accessing the suicide websites.

The Report states that because someone at the witness's home had been accessing the suicide websites and it now appeared to be the witness who had accessed the suicide websites, these matters were reported to the Case Manager on 30 August 2010. The Case Manager informed the CCC's Acting Director of Operations. The Acting Director of Operations informed the CCC's Executive Director, and the two CCC officers then informed the CCC Commissioner. They did this in a meeting with the Commissioner that took place after 8.00 am.

Due to the failings and delays in addressing the matter, by the time of this meeting the witness had left Perth for his fly-in fly-out employment in the north of Western Australia. The CCC knew that the witness was due to fly to the north to his employment that morning.

On the same morning, *"the Acting Director of Operations, the Case Manager and the Analyst reviewed a number of options available to the CCC in responding to its concern about the witness's well-being".* In spite of the compelling information in respect to the witness's actions and apparent risk of suicide, the option of canceling the public examination was considered and dismissed.

It is not entirely clear whether converting the public examination to a private hearing was considered. If so, it was equally dismissed.

The Report states inter alia that *"As previously noted TI had revealed that the witness had been researching penalties for fraud. It had also revealed that he had been researching the possibility that his assets would be confiscated if he should be convicted of fraud. This led the Acting Director of Operations to conclude that these possibilities were the witness's*

*principal concerns "*.

As set out earlier, these actions were undertaken prior to the receipt by the witness of the summons and his subsequent actions in respect to possible suicide.

The recollection of the Executive Director of the CCC is that despite the witness's actions, he then regarded the possibility of suicide as one of a number of possibilities. He states that others were:

- The witness's actions amounted to a cry for help.
- The witness was laying the basis for a medical certificate to avoid attending the hearings;
- The witness's conduct amounted to a ruse to flush out whether the CCC was intercepting his telephones;
- The witness's conduct amounted to a ruse to cover his intention to flee Western Australia; (Presumably this was based in part on the false belief that his son's passport was for himself and that he considered at one point moving to Tasmania for employment) and
- The witness's conduct formed part of the adjustment process by which he would accept the inevitability of the hearings and the possibility of criminal charges and jail.

These explanations for the witness having checked his life insurance policy, having used a computer to access a range of web sites concerning methods of committing suicide, including by cutting wrists and trying to buy a scalpel might be extraordinary to an objective and dispassionate person however they apparently led to the Commission not postponing its public examination or converting it to a private hearing.

The Acting Director of Operations stated that *"he believed that the prospect of a public examination was not a 'real factor of worry' to the witness and that his concerns would have been the same whether his examination took place in private or in public"*.

How and why this conclusion was reached as against the prospect that the witness had great concern about his public examination is not revealed.

The Commissioner's recollection is that CCC discussions encompassed the option of canceling the proposed examination and it was decided that the public examinations - including the examination of the witness — should proceed as scheduled. He says this was because:

*"We were all of the very firm view that what the witness was worried or stressed about was not the fact that he had been summonsed to a public hearing, but that the Commission had (or was obtaining evidence of his conduct and that he would be convicted of serious offences, sent to prison and have his criminally obtained assets confiscated "*.

The Report states that *"The Commissioner says that this was demonstrated, in particular by the web searches that the witness had made as regards jail terms for fraud and by efforts*

*that he had made to divest himself of assets ".*

Disconcertingly, this view expressed by none other than the Commissioner is apparently made as if the behaviour by the witness subsequent to the witness receiving the summons did not take place.

Once the outcome of the enquiries as to whether the witness had left Perth for his employment disclosed that he had and enquires also revealed that the pharmacy from which he had tried to buy a scalpel had referred him to an art supply shop), the Acting Director of Operations held a second meeting with the Commissioner and the Executive Director.

This took place at about 2.55 pm that day (30 August 2010). The Acting Director of Operations told the Commissioner and the Executive Director that his preferred option was that of telling the wife that the witness had been checking his life insurance policy, that he had tried to buy (and had perhaps bought) a scalpel and that he had been accessing suicide websites.

It may to some be inconceivable that it took the CCC to confirm that the witness had in fact purchased the scalpel and that it was he who accessed the websites before action was taken.

By early afternoon on 30 August 2010 the Executive Director had also concluded that the witness's actions could be interpreted as a move from some form of mere ideation about committing suicide to planning to do so. His understanding was that males, once having started to plan to commit suicide, would often do so quickly, with a comparatively high level of success. He regarded this possibility as one that reinforced the need for the CCC to intervene that day.

This epiphany was tragically too late and in any event nothing came of it which mitigated against the threat of the witness's suicide. Particularly disturbingly, the Executive Director nor anyone else at the Commission appears to have ever considered obtaining expert medical advice about the deeply disturbing material they had before them; in the writer's view, an unforgivable failing.

On the afternoon of 30 August 2010, the Case Manager telephoned the Company's Operations Manager at the worksite and the Company's Business Manager, a long time friend of the witness. He passed on the material information to each of them.

On 31 August 2010, the Business Manager telephoned the Case Manager and told the Case Manager that he had spoken to the witness and that the witness had denied that he had any thoughts of suicide.

For a person who had resolved to commit suicide this was a perfectly natural, normal and predictable response.

The CCC did not have any further contact with the Company concerning the witness.

Equally predictably, TI revealed that the witness maintained to his friends and his wife that he had no intention of committing suicide and that he continued to deny that he had

accessed websites concerning suicide. Presumably it did not strike the CCC that if lying about accessing the websites he may just be lying about his intention in respect to suicide.

The Report states that on the afternoon of 30 August two Investigators who had no prior involvement in the inquiry visited the wife's home at 5.00 pm. They passed on the material information. When asked about the source of the information they told the wife that they had been told it by 'somebody' and that their source was credible.

The investigators provided the wife with the names of two organisations she might contact for advice concerning her husband, being 'Crisis Care' and Beyond Blue'.

The wife, who was upset by what she had been told, expressed doubt about the source of the information and about the notion that her husband would commit suicide. She told the two Investigators that she had been with her husband when he acquired the scalpel and that he had told her he needed it for work.

*The wife has subsequently stated that "I also asked them what the CCC was accusing Bill of? They said they didn't know as they were not part of the investigation. I believe this was a critical error. I'm sure the CCC had made up their minds that I must have known what Bill had been doing at The City of Stirling. I had no knowledge of this ".*

*"I should have been told by the CCC how much trouble Bill was in. It wasn't until the hearings started that I became aware of the enormity of what Bill was being accused of.*

*I ended up in hospital on a psychiatric ward for six days.*

*It saddens me so much to know Bill was dealing with what he was being accused of by himself. The CCC knew he was away for twenty six days at a time. He was so vulnerable".*

Curiously unrecorded in the Committee's Report is the wife's statement that *"when the two CCC people came to my home on August 30th to tell me Bill was suicidal I did not believe it. I did not believe Bill would kill himself because I knew how much Bill loved me and his two children.*

*I also told them that Bill's brother had committed suicide and he would not put us and his mum and dad through that, because he knew what it was like to be left behind after a suicide. Bill was seventeen when his brother died".*

Equally unreported is whether the two Investigators informed their superiors of their conversation with the wife and the revelation of the witness's brother's suicide.

Lacking in understanding of such matters the wife thought the witness's brother's suicide greatly diminished the likelihood of her husband also committing suicide. The medical truth is entirely to the contrary.

The wife telephoned her husband shortly after the Investigators had left. This conversation (which was monitored by TI) included exchanges to the following effect:



(a) She told her husband that the CCC had just been to their house, that she didn't know what was going on and that the CCC had concerns for his safety. He replied that he did not know what the CCC was talking about.

(b) She told her husband that the CCC thought that he was going to commit suicide. He said that it was 'none of their business'. She asked why the CCC would be thinking this. He replied that he had no idea.

(c) She repeated the information given to her by the Investigators. Her husband was dismissive of it and asked why the CCC was searching their home. She told him that the CCC had not searched their home.

(d) She told him that she didn't understand how the CCC would know that he had bought a scalpel. The witness replied that he had no idea. She also asked how the CCC could know that he had 'been on websites'. He said, again, that he had no idea but added that 'obviously they're monitoring everything I've got and ever looked at all'.

(e) The witness repeatedly assured his wife that he was fine.

After speaking with her husband the wife examined one of two laptop computers owned by them (the other had been taken by the witness with him to the Worksite). She searched the history of sites previously visited and found the suicide websites that had been accessed by her husband. She did not tell her husband that she had done this and nor did she inform the CCC.

The witness's wife said that she did not want to believe that her husband would commit suicide (although she was worried that he might do so). However, she did speak with a friend of her husband and expressed concern to him. He telephoned the witness, who assured the friend that he was not contemplating suicide.

On the evening of 30 August 2010, one of the investigators made a telephone call to the wife to check that she was alright. The wife's mobile telephone was switched off. There was no further contact with the wife by the CCC before the witness' death.

While the investigators did give the wife cause for concern, in effect the Investigators conveyed to the wife that their information was hearsay albeit credible. Putting aside her discovery of the websites, given the apparent status of the information and her knowledge of the purchase of the scalpel, the wife may well have been a great deal more reassured than she need or should have been.

Had the witness's wife been told in graphic detail the full knowledge of the CCC in respect to her husband's actions and their investigation of him, certainly she would have had a great deal more concern for him and may have well attempted to have taken immediate and urgent steps to assist with his state of mind albeit it was now on Barrow Island.

It might be said that by any measure, the visit was clumsy, unsophisticated, lacking in gravitas and deceiving of the wife.

A reader may be dismayed to learn that the Committee Report states that: the conversation with the wife was a form of counseling.

The witness committed suicide alone and on the remote Barrow Island on either 7 or 8 September 2010 although it seems clear that he committed suicide on 7 September.

The Parliamentary Inspector expressed the view that the Commissioner should have exercised his discretion under the CCC Act and either converted the public examination of the witness to a private hearing, or else deferred the public hearing to a later date and to have informed the witness of that fact. This, according to the Parliamentary Inspector, should have occurred because:

- there was no direct evidence that adverse publicity was in fact one of the witness's concerns but, equally, there was no evidence that it was not;
- the CCC and the Commissioner himself regarded the threat of suicide as credible;
- once there was a credible threat, the only logical and reasonable step was to assume that public exposure of his wrong-doing might be a trigger for the timing of his suicide; and
- given what was at stake, "it could not reasonably be concluded that it was in the public interest to open the scheduled examination to the public".

That appears as a perfectly reasonable conclusion to have reached but not so for the Commissioner. The Commissioner considers the Parliamentary Inspector's view to be unfounded in fact, unfair and unreasonable.

The Commissioner said: *"All of the available evidence positively revealed that the witness's concern was the inevitable progression of the CCC's investigation, to the point at which he saw he would be held to account for what he had done"*.

What we do know is that the CCC took no action to seek proper expert advice about the mental state of the witness or motives for the actions of the witness; that in the face of a credible belief that the life of the witness was in danger, it persisted in its determination to call the witness to a public examination and that the holding of a private hearing was dismissed.

Delays in the CCC Analyst passing on critical information about the actions of the witness were justified by the CCC in part on the basis that he had other things to do, it was out of hours and he may have been distracted. This when the Analyst knew that the witness was accessing in depth, suicide sites.

Finally we do know that the witness died as a result of an investigation into him by the CCC.

## **EFFECT OF ADVERSE PUBLICITY UPON INDIVIDUALS**

The conduct and behaviour of the CCC towards this witness comes after widely publicised statements by a former Western Australian Cabinet Minister, the Hon Norm Marlborough

that his public examination by the CCC had driven him to the very edge of suicide and had it not been for the support of his family he doubted he would have survived.

Mr Marlborough's state of mind was responsible for his hospitalisation and his ongoing psychiatric treatment. Unlike the dead witness, Mr Marlborough had the life saving advantage of medical and family help. There can perhaps have been no better example for the CCC of the devastating effect upon witnesses called by it for public examination.

Mr Marlborough's crushing illness came in spite of the fact that also unlike the deceased witness, he was not facing allegations of dishonesty, criminal proceedings or the prospect of a jail term, considerations which the CCC insists were responsible for the death of the witness.

One might have expected the CCC to have remained entirely alive to Mr Marlborough's experience when making choices about the fate of this witness's public hearing and his state of mind.

That having been said, there is no evidence offered that the CCC was likely to obtain information in respect to its public examination of the witness that its investigations and private hearings of other witnesses had not already disclosed.

There are other high profile cases of people committing or attempting to commit suicide because of adverse publicity rather than due to the consequences of the outcome of an inquiry.

In October 1997, following accusations by his political opponents in the cut and thrust of politics that he had improperly used his Parliamentary travel allowance, Labor Senator Nick Sherry attempted suicide. Although he was later cleared of these allegations and it seemed clear at the time that he had committed no offence, they caused significant distress and led to his attempted suicide. He was later diagnosed with clinical depression.

In Sydney in July 2005 John Brogden, then leader of the New South Wales State Liberal Party came under fire for offensive behaviour at a function when he allegedly described the Malaysian-born wife of the then NSW Premier Bob Carr, a "mail-order bride". Brogden later publicly apologised for this remark. He was also accused of unwelcome sexual advances to two unnamed female journalists at the same function.

As a consequence of the controversy, John Brogden resigned as Leader of the NSW Opposition.

The next day he attempted suicide and spent time in respite care in a North Shore psychiatric facility. Brogden was consumed by the publicity of the affair rather than the consequences.

In August 1997 Sydney electrical repair shop owner, Benny Mendoza committed suicide after Channel Nine's *A Current Affair* programme accused him of overcharging on two repair items, accusing him of overcharging and in one case of not doing any work at all on the item. The story alleging overcharging went to air on Monday 18 August 1997. On

Thursday 21 August, Mr Mendoza, a father of two, hanged himself in his garage. The reporter said the repairman gave no hint he was suicidal during her dealings with him.

It seems clear enough the victim was mortified by the adverse humiliating publicity.

#### **FINDING OF THE JOINT PARLIAMENTARY COMMITTEE**

In the face of overwhelming and compelling findings and conclusions in which the Parliamentary Inspector is critical of the Corruption and Crime Commission, the Joint Parliamentary Committee in its sanitized Report finds that it cannot be said that it is manifestly unreasonable for the Commissioner to have proceeded with the public hearing. What pray, would the Committee find as a manifestly reasonable circumstance to postpone the public examination of a witness.

#### **CCC PRESS STATEMENT**

On 9 March 2011, in response to an interview on radio station 6PR by Paul Murray with the witness's wife and an article in the 'West Australian' newspaper by the same journalist, both critical of the CCC, the Corruption and Crime Commission issued a further press statement.

In the statement, the Commission stated that *"The Commission informed his family and employer on its concern at least eight days before the man's death "*.

The invocation of the new phrase *"at least"* is used against the fact that it seems clear from when the wife was last able to speak to the witness that he took his life on 7 September. The CCC contacted the witness's wife late on 30 August. The use of the phrase *"at least"* in the circumstances is an interesting emphasis.

The press statement issued by the CCC following the death of the witness was less emphatic. *"Eight days before his death, the Commission informed the witness' immediate family and his employer of its concerns for his welfare"*..

Not stated is that the CCC had known for some days that the husband had checked on his insurance policy, attempted to buy a scalpel and accessed suicide websites before notifying his wife of its concern.

Also not stated is that the CCC notified the witness's wife of its concern some nine and a half hours after the witness had flown to his employment at Barrow Island.

The press statement states that *"The Commission did this [notified the wife and employer] because it believed his family and employer were in the best position to deal with the issue"*; this after having allowed the witness to fly from Perth before deciding to tell the wife of their concerns, at which point he was for all practical purposes entirely beyond her help.

The involvement of the company according to the Report was that the Manager telephoned the CCC Case Manager who told the Case Manager that he had spoken to the witness and that the witness had denied that he had thoughts of suicide. The Manager according to the Report may have also told the Case Manager that the witness seemed fine.

The press statement further states that *"In terms of the influence of the public hearing on the suicide of the witness, a Parliamentary Report found there was no direct evidence that the actions of the witness were driven by fear of publicity "*.

The Parliamentary Committee Report states:

The Parliamentary Inspector does not express a view as to whether or not the fear of a public hearing was a trigger for the witness's suicide. According to the Parliamentary Inspector:

*"Whether there is or is not evidence in support of the proposition that the fear of publicity was, in fact, a trigger for the suicide is beyond the scope of and hence irrelevant to, this report"*.

The Parliamentary Inspector did, however, express his view that the Commissioner should have exercised his discretion under the CCC Act and either converted the public examination of the witness to a private hearing, or else deferred the public hearing to a later date and to have informed the witness of that fact. This, according to the Parliamentary Inspector, should have occurred because:

- there was no direct evidence that adverse publicity was in fact one of the witness's concerns but, equally, there was no evidence that it was not;
- the CCC and the Commissioner himself regarded the threat of suicide as credible;
- once there was a credible threat the only logical and reasonable step was to assume that public exposure of his wrong-doing might be a trigger for the timing of his suicide; and
- given what was at stake, it could not reasonably be concluded that it was in the public interest to open the scheduled examination to the public.

The CCC press release states that rather than the fear of the publicity causing the suicide, *"..evidence held by the Commission showed the witness feared he could face serious charges "*.

The Committee Report states that the Parliamentary Inspector went on to say:

*My conclusion was (and is) that it was unreasonable, in all of the circumstances, to assume that the witness's longer term concerns were his only concerns. In my experience it would be most unusual for someone who has apparently concealed fraudulent behaviour (certainly from his employer, as the CCC knew from its TI, and possibly from others, including his children) not to be concerned by the prospect of public exposure.*

*It is true that there was at the time no direct evidence that adverse publicity was in fact one of the witness's concerns but, equally, there was no evidence that it was not. I have said (and it seems to me to have been obvious) that no reliance could be placed on the witness's subsequent protestations to the effect that he was untroubled by the forthcoming public*

*hearing (as I understand him, the Commissioner accepts this). In those circumstances, the only assumption that should reasonably have been made was that publicity might well have been one of his concerns.*

*That this is so still seems to be underscored by the fact that, as the Commissioner told me in his letter dated 1 November 2010 ... the question whether the witness 'may have been contemplating harming himself because of a fear of being called for public examination and so whether that could be allayed by directing his examination (or the hearings generally) be conducted in private were threshold questions for me - and were discussed - once the topic of suicide arose. '*

*That comment, and the comment that these questions 'remained ever-present in [the Commissioner's] mind to the end' seem to me to reflect an acceptance of the proposition that this was, at least, a possibility that justified serious consideration. Moreover, in my opinion it affords no answer to say that it was considered and rejected. The point is that it was, in all of the circumstances, unreasonable to reject it.*

*There is no doubt that the CCC, and the Commissioner himself, regarded the threat of suicide as credible. That is why the disclosures were made. Once there was a credible threat, it was a small step (and, in my opinion the only logical and reasonable step) to assume that, whether the witness was or was not concerned primarily by his exposure, conviction and imprisonment and by the possible forfeiture of his assets, public exposure of his wrong-doing might be a trigger for the timing of this suicide.*

*As I have said, once it is accepted that this possibility existed as a reasonable possibility (and in my opinion it must be), then it must also be accepted that, in circumstances in which there was seen to be a credible threat of suicide by a man whose public examination was only one week away and who was to be away from his family throughout that week, the only reasonable course, given what was potentially at stake, was to take the conservative approach of deferring the prospect of adverse publicity. This would give the witness a better opportunity to change his mind, perhaps after having the benefit of face to face discussions with his wife and family.*

*As I have said, the prospect of adverse publicity could have been deferred by hearing the evidence of the witness in private. Alternatively, the public examination might have been deferred in the hope that, by the date of resumption, appropriate protections might have been put in place.*

## **PUBLIC HEARINGS**

In a speech to University of Notre Dame in May of 2009, Commissioner Roberts-Smith had this to say:

*"With regard to the potential prejudice to, or privacy infringements of individuals, the Commission acknowledges that public hearings may sometimes (but hopefully rarely) come at considerable cost to some witnesses and their families. While it is not the Commission's intention to cause undue stress and discomfort to individuals, the overwhelming need must be to address the public interest in identifying the matters which it is expected will be raised during these hearings, which go to the heart of good and effective governance in this State".*

The Commissioner went on to say:

*“Generally speaking, there are three main benefits that result from the conduct of public hearings. First, public hearings enhance the public's confidence in the Commission's work. The public can see for itself and so judge for itself the conduct of the public officials and others which is being exposed, and the worth of the Commission's work.*

*Second, it allows the public to become more aware of the range of matters that concerns the Commission and promotes awareness of public sector misconduct more broadly. Experience has shown the complaints of suspected misconduct brought to the Commission's attention increase during high profile public hearings. In some cases, people come forward with important additional information which advances the investigation which is the subject of the public hearing.*

*And third, the educational benefit of these public examinations of alleged serious misconduct for other public officers cannot be overestimated”.*

It is against those criteria that any consideration for a private hearing for the deceased witness had to compete: Public confidence, public awareness and educational benefit!

The matter of controversy and deep concern about the use of public hearings by the Corruption and Crime Commission is not new. It has been an ongoing matter since the first use of these powers by the CCC.

This controversy was such that a former JSCCCC announced an *Inquiry into the Efficacy of Public Hearings* on 17 May 2007 with the following terms of reference.

*The Committee will consider among other matters, the adequacy of criteria for opening or closing examinations under section 139 and 140 of the Corruption and Crime Commission Act 2003 and the opportunities for persons aggrieved by allegations made before the Commission, particularly during a public examination, to respond to those allegations. The Committee intends to call for public submissions to the Inquiry in the near future.*

Regrettably, with the proroguing of the Parliament the committee lapsed and the reference with it.

The very eminent jurist and former Parliamentary Inspector, Malcolm McCusker AO QC recommended, following a botched and deeply flawed CCC Report into a public servant who was in every respect exonerated, the following process for CCC hearings:

*“A decision to publicly examine a person, and then to put to that person damaging allegations in public, ought not to be made before that person has been privately examined, the allegations put to him or her, and a full and thorough investigation carried out (including any matters raised by that person in response) to ensure that there is a sound evidentiary basis for the allegations”.*

In discussing the matter of public hearings, Commissioner Len Roberts-Smith told a

Legalwise seminar in June 2010 that:

*Public hearings — especially those dealing with Smiths Beach and the general lobbying issues — have been controversial, particularly in terms of the damage claimed to have been done to the reputation of some witnesses.*

*"In regard to the effect on the reputation of individuals it has been said that often any damage to a person's reputation resulted from the public revelation of his or her conduct. In that circumstance it was really the person's conduct rather than the Commission's revelation of it that damaged their reputation. That being said, the degree to which the reputations of individuals might be inadvertently adversely affected is a matter of careful consideration by the Commission. "*

In light of the Commissioner's words that *"it was really the person's conduct rather than the Commission's revelation of it that damaged their reputation"* and his particular reference to public examinations in the DPI case (D'Orazio matter), it is important to record the consequence of public examinations upon the reputation and career of Mr John D'Orazio.

Mr D'Orazio was enmeshed in a CCC inquiry involving public hearings relating to a panel beater in which the CCC made an adverse finding against Mr D'Orazio.

Based entirely on the public hearings, ever before any findings of the CCC, Mr D'Orazio was sacked as a Minister of the Crown and driven from the Labor Caucus and Labor Party. The subsequent adverse CCC Report ensured Mr D'Orazio would be defeated at the next Election, difficult as victory was going to be once CCC public hearings drove him out of the Labor Party.

Parliamentary Inspector, Malcolm McCusker QC had this, inter alia to say about the CCC Report.

*"The Commission has no statutory power or jurisdiction to include, in a report made and tabled pursuant to section 84, its assessment or opinion of inappropriate conduct". Its opinion in the Report, that Mr D'Orazio was guilty of "inappropriate conduct" was therefore beyond its jurisdiction.*

*The CCC has (rightly) accepted that Mr D'Orazio's conduct was not "misconduct". (It was clearly not open to the CCC to decide that it was.) Apart from anything else, it was not, therefore, conduct which could constitute "reasonable grounds for dismissal from his office", and there is no suggestions by the CCC that it was.*

*Because the CCC 's opinion, that Mr D'Orazio's conduct was "inappropriate is based on the subjective view of the author of the report (and possibly other Commission officers, unidentified) there are no objective criteria against which that subjective opinion may be tested.*

*However, based on the evidence before the CCC (even given the construction put on it by the CCC) no reasonable decision maker could decide that Mr D'Orazio's conduct was "inappropriate ", within the meaning of that term ascribed to it by the CCC in its Report "*



Regrettably this was all too late for Mr D'Orazio.

### **ATTITUDE OF THE JOINT STANDING COMMITTEE TO ITS OWN HEARINGS BEING MADE PUBLIC AND ON RECEIVING EVIDENCE FROM THE PUBLIC**

Following the glaring publicity which has for many months swirled around the apparently unrelenting recalcitrance of the CCC in refusing to accept the Parliamentary Inspector's view of his statutory right and obligation to monitor, audit and report on the conduct and performance of the CCC, the Committee took unto itself the reference:

*"the functions, roles and responsibilities of the CCC and the Parliamentary Inspector as they pertain to each other".*

In respect to the inquiry into the relationship between the roles and functions of the CCC and the Parliamentary Inspector, the committee in dealing with this reference limited itself entirely to taking evidence from the CCC and the Office of the Parliamentary Inspector and held informal briefings with the approximate relevant Queensland equivalents.

Having incurred the very considerable expense of travelling to Brisbane for informal discussions, it seems a surprising failing of the Committee that Mr Terry O'Gorman QC, an eminent and prominent civil libertarian of Australian wide repute, who coincidentally has been outspoken on the role and powers of the Queensland Office of Parliamentary Inspector should not be invited to give evidence. There can be no doubt that Mr O'Gorman's contribution can have only greatly added to the restricted body of evidence that the Committee has chosen to allow.

Unquestionably, had the Joint Committee sought evidence from the public it would have received substantial material no doubt in large measure of an informed and enlightening nature albeit weighted with the influence of personal experience. One can be certain that had the law bodies been welcome to contribute, they would have all provided useful and thoughtful evidence.

Disturbingly, in spite of the very substantial public interest in this matter, the Joint Committee cast a veil of secrecy over its hearings by accepting all evidence in private sittings.

That all hearings were conducted as private hearings is on my understanding of matters a decision unilaterally made by the Committee and not at the specific request of any of the witnesses.

Particularly given the terms of reference of the Committee, there is no apparent or obvious reason why the Joint Committee should set aside the unassailable and enduring principle of western democratic parliaments for transparency and openness of their proceedings and deliberations unless compelling reasons to the contrary arise.

It goes without saying of course that the same principle applies to Committees of the

Parliament. Open and transparent deliberations of their proceedings are part of those duties and responsibilities.

Had the Joint Committee invited those who did give evidence to approve the publication of their evidence, doubtlessly the overwhelming majority would have welcomed the opportunity. Obviously sensitive operational material could easily be edited.

On this occasion the Joint Committee appears to take the view that to expose the public to the evidence of witnesses prosecuting arguments in favour of their views would cause a “loss of confidence by the public” of the nature set out by the CCC in favour of transparency.

Conspicuously, no opportunity was provided by the Joint Standing Committee to the public who may have legitimate grievances with the CCC.

Having taken evidence from eight members of the CCC, four members from the Office of the Parliamentary Inspector and held briefings with seven witnesses in Queensland, the Joint Committee’s finding in respect to the central issue of the powers of the Parliamentary Inspector, which question invited the reference, amounted to giving the Commission and the Parliamentary Inspector six months to sort out their differences. No consequential substantial findings were made by the committee.

The Committee’s solution to the impasse between the Parliamentary Inspector and the CCC was to hold a private workshop between the two bodies.

The Report informs its readers that:

*“No final position is expressed by the Committee, in deference to the agreement reached at the workshop which was to allow the new Parliamentary Inspector and the Commissioner a period of six months to report back to the Committee”.*

Particularly disturbing is the fact that not only was the ‘workshop’ conducted within the provisions of a private hearing, the public has been denied the slightest idea of what is contained in the “agreement reached”. Are we to take it that it is not in the public interest for the public to be exposed to such deliberations?

“In what is titled in the Joint Committee’s Report as the Chairman’s Forward, the Report informs readers that:

*“Since commencing in the office in June 2007, the Commissioner the Hon Len Roberts-Smith RFD QC, has reviewed various aspects of the CCC’s practices, and where appropriate, refined them. The Commissioner’s attention in this capacity has been particularly focused on improving processes concerning the CCC’s interaction with witnesses and those subjects of an investigation, both during continuing investigations and at their conclusion and reporting stage”.*

*“The Commissioner has implemented a number of enhancements to CCC practices for both external and internal purposes. Externally, these are aimed at increasing clarity for*

*witnesses of their rights and obligations in regard to investigations and the CCC Act. Internally, this refinement has resulted in more robust, transparent and reviewable practices in performing the CCC's functions and improving the quality of CCC reports".*

The first, immediate and obvious question one is bound to ask is in what way have these steps been taken? Whether the Committee has taken these claims on face value or has received evidence supporting them is not revealed by the Committee.

The four recommendations which the Committee did make, minor as they are save for proposing that the Parliamentary Inspector table his Reports through the Committee, which will lead to the situation we now have with the Death of a Witness inquiry, all strengthen the position of the CCC in terms of reporting procedures.

However, following the exhaustion of this reference, the central and threshold question of what powers are vested in the Parliamentary Inspector as safeguards for the public against inappropriate conduct and findings by the CCC is not contained within a recommendation. It is this question and this question alone which has created the conflict between the two agencies and the subsequent reference the subject of this correspondence.

It is trite to observe that interest in the question of the powers and conduct of the CCC and the Parliamentary Inspector and the exercise of those powers extend beyond that of the two agencies and are not for them and the parliament alone to cogitate upon.

The disputation between Mr McCusker and Mr Len Roberts-Smith is not an esoteric matter simply of academic interest. It goes to and is central to the inherent rights of all Western Australians and fundamental to the checks and balances that are imposed upon a law enforcement agency which is empowered to strip away the most basic of rights preserved for individuals in our society.

This issue is a matter of good law, not goodwill.

The fact that a number of public officers have had their lives, careers, reputations and to varying extents their finances and health destroyed by findings of the CCC, which findings the Parliamentary Inspector subsequently found to be without substance or merit is living evidence of this.

Putting aside whether he had legislative authority to do so, the number of occasions that the Parliamentary Inspector has found that the Reports of the CCC as they relate to individuals cannot be substantiated must be deeply troubling to those who have cause to consider the matter.

The Parliamentary Inspector's reports provide deeply disturbing reading. It is inconceivable that Mr McCusker AO QC can have been wrong at law on every occasion. We do now know that in the Brabazon case, Parliamentary Inspector Steytler's views were accepted by the CCC as correct but that case stands alone.

The central question confronting the Joint Committee was not one of a conflict between the two agencies but rather whether the Parliamentary Inspector should have the legislative

powers which Mr McCusker AO QC claimed he had.

It is not with the greatest respect, the proper discharge of the legislative responsibility of the Committee to act as a mediator in the dispute. It is the responsibility of the Committee to determine with the benefit of clear and abundant evidence whether it is good public policy and in the interests of the community for the Parliamentary Inspector to have those powers.

An overwhelming majority of the community would support the Parliamentary Inspector being clothed with the authority that Mr McCusker AO QC believes that legislation presently provides.

That the Joint Committee has not found it appropriate to hold public hearings in this matter should be treated with the greatest apprehension by the Parliament and the public.

#### **RELATIONSHIP BETWEEN THE JOINT STANDING COMMITTEE AND THE CCC**

As the pre-eminent Jurist in Western Australia and former Parliamentary Inspector of the Corruption and Crime Commission Malcolm McCusker QC said in February this year in his address when giving the Canon Frank Sheehan Oration, the Administration of Justice cannot ever be perfect.

No one should know that better than the CCC and the Joint Standing Committee on the CCC.

The recently retired Commissioner, Len Roberts-Smith when as a Supreme Court judge on the Western Australia Court of Criminal Appeal, joined two of his colleagues in dismissing an appeal by Mr Andrew Mallard against his conviction for murder and in so doing sent him back to the wretched hell hole of jail for a further two year until rescued by the High Court.

In dismissing the appeal by Mr McCusker QC on behalf of Mr Mallard, Judge Roberts-Smith and his colleagues gave Mr McCusker QC, by any reasonable measure, a quite extraordinary dressing down from the bench for his appeal and described the appeal as having developed the characteristics of a fishing expedition.

In a remarkable judgment, not only did the Western Australian Court of Criminal Appeal find against Mr Mallard, it had some savage things to say about his appeal. In this respect the court quoted approvingly the words of the Supreme Court of South Australia in dealing with another case. *"Some may think that the time occupied, and the expense incurred, was out of all proportion to the nature and difficulty of the issues which properly arose for our decision, and that much of the argument received amounted to the extrapolation of a red herring"*.

The WA Court noted that *".. the passage quoted is precisely apt to describe this hearing"*.

Still later the WA Court stated *"We are not suggesting that the present appeal was embarked upon as a fishing expedition, although it appears to have developed that characteristic"*.

In further discredit to Mallard's appeal the court also drew attention to the cost to the public

of such an appeal.

As is well documented, Mallard went to the High Court and the findings of Roberts-Smith were unanimously overturned by the five High Court judges.

Mr McCusker has since said that the Mallard judgement was the low point of his long and distinguished legal career.

As Malcolm McCusker also said, high profile exonerations such as the Mickelbergs, John Button, Darryl Beamish, Andrew Mallard and other would not have occurred without the volunteer work of lawyers, journalists and others.

The writer raises this matter because Committees' of the Parliament, not least those who are duty bound to monitor, scrutinize and view with a healthy questioning and suspicious eye, those bodies invested with extraordinary powers, which trample on centuries of established citizens rights, which are the golden thread of orderly and civilized societies, there is a great burden of responsibility.

The Mallard matter is raised to illuminate the risk of oversight committees having an unquestioning faith in the body for which it is created to question. For many people who have been tainted by the CCC, there is no legal relief or remedy.

As High Court judge Dyson Heydon said in a recent judgement: *A major difficulty in setting up a particular court... is that the separate court tends to lose touch with the traditions, standards and mores of the wider profession and judiciary. "Special courts, he said "tend to become over enthusiastic about vindicating the purposes for which they are set up... They tend to feel that they are not fulfilling their duty unless all, or almost all complaints that mischief has arisen are accepted".*

The CCC may not be a court. It has greater powers and can do greater mischief than any court. Its conclusions cannot be questioned or challenged in any court.

The State Shadow Attorney General, and presumably the Attorney General in a Labor Government repeated what he had previously said. The Joint standing Committee on the CCC was nothing more than cheer squad for the CCC.

It is not the intention of the writer to explore all the reasons that there maybe a belief that the Committee has in the past given the impression that the CCC can do no wrong, however some public statements by Joint Committee members have not with respect been helpful.

Deputy Chairman of the Joint Standing Committee, John Hyde MLA told 7.30 Report viewers in 2007 that *"The successes of CCC in its first three years are without par in the history of anti corruption in Australia".*

Claiming that the Queensland Fitzgerald Royal Commission, the New South Wales Wood Royal Commission and the NSW ICAC but to name three are not on a par with the WA CCC is a bold statement.

John Hyde on the same programme: *"I don't think in the CCC anybody yet can hold up an ironclad example of somebody whose life has been destroyed by the CCC, not by their own activities"*.

The writer has looked for a shorter summary of the following Allen case for the sake of brevity however without the full executive summary it is difficult to understand the appalling manner in which the Allen matter was dealt with and the Report which followed.

Mr Allen has not to this day, received a satisfactory response from the Parliamentary oversight Committee for the scandalous circumstances into which he was plunged. If Mr Hyde wants an indelible example of an innocent victim whose life has been devastated *"by the CCC, not by their own activities"* he might look no further.

**PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION OF WESTERN  
AUSTRALIA**

**REPORT ON THE CORRUPTION AND CRIME COMMISSION'S  
INVESTIGATION AND FINDING OF "MISCONDUCT" BY MR MICHAEL  
ALLEN**

**EXECUTIVE SUMMARY & RECOMMENDATIONS**

1. The CCC made a finding of *"misconduct"* against Mr Allen because (as it concluded in its Report of 5 October 2007) he had *"complied"* with the wishes of Mr Burke in August 2006, by agreeing to appoint *"a DPI officer"* (Ms Pedersen) to write a *"DPI report"* on Smiths Beach, in preference to *"other DPI officers"* (Ms Clegg).

2. Before making and publishing such a grave finding a careful and thorough investigation should have been carried out. At the very least, it would be expected that the CCC would have:

2.1 interviewed Ms Pedersen, to ascertain whether she had been *"appointed"* by Mr Allen to *"write a DPI report on Smiths Beach"*; and

2.2 interviewed Mr Singleton, Director of the Environment and Sustainability Directorate, who was the supervisor of both Ms Pedersen and Ms Clegg, to ascertain whether there was a *"DPI report on Smiths Beach"* written, or to be written, in August 2006, and if so, whether Mr Allen had any power to appoint Ms Pedersen to write such a report; and whether he had appointed, or sought the appointment of Ms Pedersen, *"in preference to Ms Clegg"*; and

2.3 interviewed Ms Clegg, to ascertain whether Ms Pedersen had been *"appointed"* to write *"a DPI report on Smiths Beach"* *"in preference"* to her.

3. However, of those persons, all of whom were obviously relevant witnesses, only Ms Pedersen was interviewed.

4. Ms Pedersen was interviewed by the CCC's senior investigator Mr Mark Ingham in May 2006. Her evidence did not support the finding of "*misconduct*" against Mr Allen, but negated it. She said that she did not believe she had ever been given any instruction by anyone to write a "*DPI report on Smiths Beach*"; that she had no memory of any such report; that she would have remembered if she had "*had a conversation that (she) had been allocated to do a job*"; and that she had "*absolutely no memory*" of Mr Allen ever telling her that she had been "*allocated*" the job of writing a report.

5. The evidence given by Ms Pedersen is not mentioned in the CCC's Report. I have not yet ascertained whether that evidence was ever brought to the notice of the Report's author. Mr Ingham was unable to tell me whether it was or not, when I interviewed him on 29 February 2008. It seems unlikely that it was, as that evidence contradicts the Report's finding.

6. The misconduct finding in the Report was not made on the recommendation of Mr Ingham, who was the senior investigator heading the investigation, in his Final Report of April 2007. Although he read the CCC's Report before it was tabled, it did not occur to him that Ms Pedersen's evidence was inconsistent with that finding.

7. Had the CCC interviewed the other obvious witnesses, Ms Clegg, Ms Cherrie and Mr Singleton (as did Ms Petrice Judge, the independent investigator later appointed by the Director General of DPI) further evidence, also inconsistent with the CCC's finding of misconduct, would have been revealed.

8. In August 2006 the DPI was not writing, or about to write, a "*report on Smiths Beach*". The only work on Smiths Beach then in progress was an assessment of whether the methodology used in a Landscape Study prepared by the developer's Consultants was consistent with the methodology required by the Busselton Shire TPS (the "*methodology assessment*"). Advice had been given to the consultant from time to time on that matter by the DPI's officers, Ms Clegg and Ms Cherrie. It did not involve, or result in, any "*opinion*" or "*report*" by the DPI on the merits of the proposed Smiths Beach development. Ms Pedersen played no part in the methodology assessment. It was not within her area of expertise. Ms Cherrie took the "lead role", with the assistance of Ms Clegg, who was never excluded from it. No suggestion was made by Mr Allen that she should be excluded. When Ms Clegg and Ms Cherrie were satisfied that the consultant's methodology conformed with the TPS methodology, Mr Singleton signed a letter to confirm that.

9. No satisfactory explanation has been given by the CCC for the omission from the Report of the evidence of Ms Pedersen, nor for the failure to interview Ms Clegg, Mr Singleton and Ms Cherrie, all of whom would have given additional evidence inconsistent with the CCC's finding of misconduct.

10. The "finding" or "opinion" of misconduct expressed in the Report was made  
(a) without referring to the evidence of Ms Pedersen, which contradicted the finding;

(b) without interviewing important and obviously relevant witnesses, whose evidence also would have contradicted the CCC's finding;

(c) by "inferring" from a TI conversation on 4 August 2006 between Mr Burke and Mr Allen, that Mr Allen "agreed to appoint Ms Pedersen to write a DPI report on Smiths Beach in preference to Ms Clegg", although Mr Allen did not, in fact, say that; and in monitored conversations, to support that inference.

(d) relying on claims made by Mr Burke to Mr McKenzie and to Mr Grill

11. Pursuant to the CCC's recommendation in its Report, that the Director General of the DPI "*give consideration to the taking of disciplinary action against Michael Allen*", the Director General appointed Ms Petrice Judge, a senior and experienced public officer from another department (Premier & Cabinet) to conduct an investigation, pursuant to Section 81(2) of the *Public Sector Management Act*. Ms Judge conducted an admirably thorough, objective and professional investigation into the allegation of misconduct, in contrast with the CCC, which had not taken into account the evidence of an important witness (Ms Pedersen), failed to interview witnesses whose evidence was obviously (and admittedly) relevant, and relied heavily on hearsay.

12. By letter of 13 February 2008, the CCC "withdrew" its opinion as stated in its Report, and "substituted" another "opinion", that Mr Allen had "agreed to arrange for Ms Pedersen's involvement in the DPI's assessment of the proposed development at Smiths Beach, in preference to other officers". This was only after I had pressed the CCC, several times, to identify evidence establishing that there was a "DPI report" which, as "*found*" by the CCC in its Report, Mr Allen had agreed to appoint Ms Pedersen to write, and following the CCC's receipt of Ms Judge's report, which established that there was no such "*DPI report*", and that Ms Pedersen had never been asked by Mr Allen to write "a report".

13. An obvious problem with the vaguely expressed "*substituted opinion*" (eg what does "*Ms Pedersen's involvement*" mean?) is that, as with the original opinion in the Report, the CCC has not identified any evidence to support it, and the evidence of Ms Pedersen, both in the CCC interview of May 2006 and when interviewed by Ms Judge, as well as the other witnesses interviewed by her, refutes it.

14. The CCC failed in its obligation to state, in the Report, its reasons for the "misconduct opinion". In particular, it did not identify

(a) the evidence said to support each element of its assertion that Mr Allen agreed to arrange for Ms Pedersen to write a DPI report in preference to Ms Clegg; or

(b) the evidence said to establish that Mr Allen did not perform his functions in an "impartial manner" (an element of the statutory definition of misconduct); or

(c) the objective criteria for "dismissal" (a further element of the statutory definition) or the evidence establishing that the case fell within those objective criteria.

15. The CCC commented on my previous report, concerning its finding of misconduct by Mr Frewer, to the effect that there was merely a "*difference of opinion*" between the Parliamentary Inspector and the Commissioner, as to the interpretation of the evidence. That is not so. In Mr Frewer's case, and now in Mr Allen's, the CCC's investigation was



demonstrated to be inadequate. Its "*opinion*" of misconduct was unsupported by the evidence, and was contrary to the evidence which the CCC had, as well as other evidence that a full investigation would have obtained. It is not merely a "difference of opinion" as to the interpretation of the same evidence.

16. The CCC failed to comply with its statutory obligation under section 86 of the *Corruption and Crime Commission Act*. The notice which it gave to Mr Allen, of proposed "*adverse comment*", in reply to which he made representations to the CCC, was substantially different from the basis for the opinion stated in the Report, of which no notice was given to him.

17. The CCC contention that the Parliamentary Inspector (who is an "officer of the Parliament") cannot review and report on an adverse finding made in a CCC Report which it has tabled in the Parliament "*including any factual errors, or inadequacy of the evidence relied on by the CCC to support the finding*", is incorrect. That would mean that the power of the CCC to make and table findings of "*misconduct*" by any public officer, (with the serious consequences that follow) would be absolute and unchecked, and not subject to review and criticism by the Parliamentary Inspector. That is contrary to the intention of the Parliament, manifest both in sections 195 and 196 of the Act, and the Parliamentary debates on the CCC Bill.

18. The CCC has failed to explain satisfactorily in the Report why it decided to publicly examine Mr Allen, with (foreseeable) consequential damage to his reputation and career.

19. The delay between Mr Allen's examination, in November and December 2006, (when he was, to use his term, "*pilloried in public*") and the publication of the CCC's Report in October 2007, was unacceptable and unfair to him. It was not until then that the Director General, acting on the CCC's Recommendation in the Report, commissioned an objective and more thorough investigation, which found that he had "*no case to answer*".

The CCC should publicly acknowledge that it was in error in finding that Mr Allen was guilty of misconduct, and withdraw not only the "*opinion*" of misconduct by Mr Allen as expressed in its Report of 5 October 2007 (which it withdrew on 13 February 2008) but also its "*substituted*" opinion of 13 February 2008, as neither opinion is supported by evidence, and both are inconsistent with evidence which the CCC had, but did not refer to in its Report, as well as the evidence of other relevant witnesses not interviewed by the CCC.

It is not so "*in the CCC anybody yet can hold up an ironclad example of somebody whose life has been destroyed by the CCC, not by their own activities*".

Reference to Mr D'Orazio's fall from grace is set out earlier in the document and reference has been made to others.

John Hyde also told the 7.30 Report that: "*If people believe that they have done nothing wrong, if people believe that there has been no ill through their activities, then, like others, they will be proven innocent*".

The Allen, Frewer and D'Orazio matters put paid to that claim by Mr Hyde however they are far from alone.

The following Brabazon matter gives rise for concern for unqualified support and confidence in the infallibility of the CCC. In its Report in August of 2007 the CCC made the following findings in respect to Mr Mark Brabazon, a senior public officer employed by the then Department of Conservation and Land Management (CALM).

### **5.2.2 Commission's Opinion of Mr Brabazon's Conduct**

The conduct of Mr Brabazon is of concern. However, even if that conduct was accepted as involving a loss of impartiality, it was probably not such as to justify termination from office and, accordingly, would be insufficient to constitute misconduct within the meaning of section 4 of the CCC Act. In reaching this conclusion consideration has to be given to Mr Brabazon's written submissions dated 7 February. Those submissions also detailed the work history of Mr Brabazon, which confirmed his position at the hearing that Mr Burke was not instrumental in securing any of his positions with the Public Service.

However, in the Commission's view, while Mr Brabazon's conduct did not constitute misconduct, he nevertheless acted with lack of integrity and his actions warrant disciplinary action by the Department of Environment and Conservation.

Therefore, the Commission recommends:

#### **Recommendation 1**

That consideration should be given to taking disciplinary action against Mark Brabazon by the Director General of the Department of Environment and Conservation. This is in regard to his integrity in relation to his dealing with the allegations of bias made by Mr Burke against a CALM employee and in providing Mr Burke with advice on how Ministerial approval could best be achieved. This included the withholding of concessions to the department he worked for.

Following a complaint from Mr Brabazon to the Parliamentary Inspector, Christopher Steytler QC, the CCC was forced to withdraw its findings and make an unqualified apology to Mr Brabazon, however as is the way with these matters and the manner of their reporting, readers remember the adverse finding rather than the withdrawal and abject apology from the CCC.

Commissioner Len Roberts-Smith QC said the Commission accepted the view of the Parliamentary Inspector, Mr Christopher Steytler QC, that the reasoning and the material in the report did not support the opinion expressed about Mr Brabazon.

As referred to earlier, subsequent to these grave mistakes by the CCC which have had devastating consequences for the lives, careers and finances of the victims, the CCC sought from the Supreme Court an ex parte application in respect to another Report by the Parliamentary Inspector seeking an injunction preventing the Inspector from tabling a Report in the Parliament.

The CCC alleged in the application that:

- the proposed report contained errors of law and fact and also contains conclusions that

were manifestly unreasonable;

□ Mr McCusker had taken irrelevant considerations into account;

□ Mr McCusker, in preparing his draft report, had gone beyond his powers and in particular the functions imposed upon the Parliamentary Inspector by section 196 of the CCC Act and the authority to report upon the exercise of those powers conferred by section 199 of the CCC Act when read with section 205 of the CCC Act;

In another example where some may see the Committee as having added to the perception Mr Quigley referred to, The Committee Chairman's Forward for the Report of a meeting held on 24 February 2011 between the Committee and the body they are charged to scrutinize stated.

*"A rare period of leave taken by the CCC Commissioner, the Honourable Len Roberts-Smith RFD QC, had given rise to the need for Mr Shanahan and Ms Archer to alternately take up their duties as Acting Commissioners in the early part of 2010. Commissioner Roberts-Smith's absence afforded the Committee the opportunity to meet with the Acting Commissioners in the midst of a period of operational duty.*

*During the hearing, both Acting Commissioners paid tribute to Commissioner Roberts-Smith and Mr Silverstone, and I take this opportunity to also acknowledge their good work in guiding the Commission. The citizens of Western Australia are well served with the Commission being guided by such dedicated and capable people. The unanimous sentiment expressed by the Committee Members after having met with Mr Shanahan and Ms Archer is that the same is clearly true of the Acting Commissioners.*

*The Committee Members were very impressed by the professionalism conveyed by Ms Archer and Mr Shanahan; both are very impressive individuals and, as with Commissioner Roberts-Smith and Mr Silverstone, the citizens of Western Australia have much to be thankful for that we have people of such high calibre willing to take on such demanding roles."*

What point is the Chairman attempting to make at the outset about the Commissioner's leave arrangements? Is he implying that he Commissioner has not accumulated paid leave?

With great respect to former Commissioners Hammond and Roberts-Smith, others can be forgiven for taking a somewhat different view of the blessing bestowed upon the people of Western Australia. Perhaps they may include Mike Allen, Paul Frewer, John D'Orazio, Stephen Lee and Mark Brabazon, all victims of the CCC who received adverse findings from the CCC and following enormous financial, emotional and personal costs, all were exonerated by the Parliamentary Inspector and in some cases, other jurisdictions.

Equally, the victims of the eleven charges for giving misleading evidence to the CCC, only to have ten thrown out by the courts and one still subject to appeal may have a different view.

A contrary sentiment may rest in the bosoms of the people who were charged with offences

only to have them withdrawn or dismissed by the courts. They presumably are not sentiments shared by Shelly Archer who after spending \$130,000 had her charges withdrawn.

The JSCCC was created by the Parliament because the parliament was acutely aware of the invasive and unprecedented powers that it was giving to the CCC, powers which extend to suspending the intrinsic rights of all citizens and striking at the rule of law.

To provide a vigilant protection for the people whom it represents, the Western Australian Parliament created an oversight committee charged with monitoring the exercise of these functions and reporting on their findings to the parliament.

In the view of the writer, there is no place in Committee Reports for what might be seen as gratuitous and fawning comments from what must be an independent and robust oversight committee.

One can only be greatly heartened by the fact that since this article was written, the Joint Standing Committee on the Corruption and Crime Commission has apparently begun to question the performance and behaviour of the CCC.

That being said, the dismissive and in part, offensive responses of the CCC to the two recent reports tabled by the Parliamentary Inspector critical of the performance of the CCC clearly demonstrate that the CCC has learnt nothing and its ingrained culture has not changed.