



***JOINT STANDING COMMITTEE ON
THE CORRUPTION AND CRIME
COMMISSION***

**ACTING PARLIAMENTARY
INSPECTOR'S REPORT IN THE MATTER
OF AN ALLEGATION CONCERNING THE
HONOURABLE JOHN D'ORAZIO MLA**

**Report No. 4
in the 37th Parliament**

2006

Published by the Legislative Assembly, Parliament of Western Australia, Perth, March 2006.

Printed by the Government Printer, State Law Publisher, Western Australia.



Joint Standing Committee on the Corruption and Crime Commission

Acting Parliamentary Inspector's Report in the Matter of an Allegation Concerning the Honourable John D'Orazio MLA

ISBN: 1 920830 64 2

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committee on the Corruption and Crime Commission. Report 4)

328.365

Copies available from: State Law Publisher
10 William Street
PERTH WA 6000

Telephone: (08) 9321 7688
Facsimile: (08) 9321 7536
Email: sales@dpc.wa.gov.au
Copies available on-line: www.parliament.wa.gov.au



***JOINT STANDING COMMITTEE ON
THE CORRUPTION AND CRIME
COMMISSION***

**ACTING PARLIAMENTARY
INSPECTOR'S REPORT IN THE MATTER
OF AN ALLEGATION CONCERNING THE
HONOURABLE JOHN D'ORAZIO MLA**

Report No. 4

Presented by:

Hon. Ray Halligan, MLC & Mr John Hyde, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on 22 March 2006 and 28 March 2006 respectively.

COMMITTEE MEMBERS

Chairman

Mr John Hyde, MLA
Member for Perth

Deputy Chairman

Hon Ray Halligan, MLC
Member for North Metropolitan

Members

Ms Judy Hughes, MLA
Member for Kingsley

Hon Margaret Rowe, MLC
Member for Agricultural

COMMITTEE STAFF

Principal Research Officer

Ms Andrea McCallum, BA, B Juris, LL B, LL M

COMMITTEE ADDRESS

Joint Standing Committee on the Corruption and Crime Commission
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7467
Fax: (08) 9222 7804
Email: jscccc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

TABLE OF CONTENTS

COMMITTEE MEMBERS.....	i
COMMITTEE STAFF.....	i
COMMITTEE ADDRESS	i
COMMITTEE'S FUNCTIONS AND POWERS.....	v
CHAIRMAN'S FOREWORD.....	vii
ABBREVIATIONS AND ACRONYMS.....	ix
CHAPTER 1 ACTING PARLIAMENTARY INSPECTOR'S REPORT TO THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION.....	1
1.1 BACKGROUND.....	1
1.2 CLARIFICATION SOUGHT BY THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION	2
APPENDIX One	5
WITNESSES TO HEARINGS	5
APPENDIX Two	7
ACTING PARLIAMENTARY INSPECTOR'S REPORT IN THE MATTER OF AN ALLEGATION CONCERNING THE HONOURABLE JOHN D'ORAZIO MLA	7

COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

The Joint Standing Committee on the Corruption and Crime Commission, and all parliamentarians, are rightly prohibited from access to the operational and evidence details of our powerful Corruption and Crime Commission.

The Committee is firmly focussed on ensuring that a correct process is always undertaken, regardless of the outcomes or findings.

I note that the Acting Parliamentary Inspector concurs with the CCC's opinion that "John D'Orazio did not engage in misconduct during the meeting at his office on the 25th day of August 2003" (Paragraph 18, CCC Report in the Matter of an Allegation Concerning the Honourable John D'Orazio MLA, 3 March 2006").

As both the CCC's and the Acting Parliamentary Inspector's reports were instigated at their own initiative under their "public interest" responsibilities, I am satisfied that the Committee has diligently and rightfully focussed in this report on the processes undertaken, not the outcome.

While it is generally acknowledged that WA has less, and less significant, corruption than the other States in Australia, our corruption fighting has moved even further towards open hearings, publicising allegations and accepting the risk of innocent people being named.

In the Eastern States, the focus in corruption fighting appears to have shifted to less transparent closed hearings, giving much more weight to the protection of innocent people being named. The high-profile former NSW Liberal Premier Nick Greiner having to resign due to a public Royal Commission assertion later proved to be false; more recently a NSW MP whose parliamentary laptop and other personal effects were removed by their CCC equivalent as part of a publicised investigation that resulted in no charge against the MP (although he had by then lost his seat in Parliament), are often cited as reasons why public figures and others should be given the benefit of closed hearings and secretive deliberations.

I would argue that the WA public, now more used to openness and transparency under our CCC does differentiate between people being named and interviewed in the CCC's public interest or corruption hearings, and someone being charged with a criminal offence and appearing in court.



MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

Act	<i>Corruption and Crime Commission Act, 2003</i>
CCC	Corruption and Crime Commission of Western Australia
Committee	Joint Standing Committee on the Corruption and Crime Commission
Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission of Western Australia
Acting Parliamentary Inspector	Acting Parliamentary Inspector of the Corruption and Crime Commission of Western Australia

CHAPTER 1 ACTING PARLIAMENTARY INSPECTOR'S REPORT TO THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

1.1 Background

The Acting Parliamentary Inspector of the Corruption and Crime Commission, Hon. Graham Scott, has undertaken this review as a matter of public interest at his own initiative, pursuant to section 195(2)(a) of the *Corruption and Crime Commission Act, 2003*, and has delivered his report to Parliament through the Joint Standing Committee on the Corruption and Crime Commission in a timely fashion.

The Committee acknowledges that at the end of the *Report in the Matter of an Allegation Concerning the Honourable John D'Orazio MLA* dated 3 March 2006, the CCC states that:

This matter will be the subject of a formal and more extensive report to Parliament in due course.¹

However, given the “public interest” rationale for initiating the current review, the Committee seeks clarification on some issues pertaining to the review.

One of the strengths of the anti-corruption bodies in Western Australia, being the CCC, Parliamentary Inspector and Joint Standing Committee on the Corruption and Crime Commission, is that we operate independently of each other. The disadvantage of operating so transparently independently, however, is that it can result in conflicting timelines with regard to the release of available information.

The Committee endorses the CCC's procedure of publicly pronouncing its findings quickly in a matter attracting a high degree of public interest. The CCC commenced its investigation into the matter on 22 February 2006, held a public hearing and issued its report by 3 March 2006.

The Committee also endorses the manner in which the CCC Commissioner weighs the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements as required under s.140(2) of the Act in determining that it is in the public interest to deliver his report in the forum of a public hearing. In response to a question by the Committee on this issue, Commissioner Hammond gave evidence at a public hearing before the Committee in October 2005 that:

¹ Corruption and Crime Commission of Western Australia, *Report in the Matter of an Allegation Concerning the Honourable John D'Orazio MLA*, 3 March 2006, paragraph 20.

[a]s a black-letter lawyer, I go back to section 140 and very carefully weigh my responsibilities in this connection because, as I see it, the decision to go public, as it were, is one that I must make and live with.²

1.2 Clarification Sought by the Joint Standing Committee on the Corruption and Crime Commission

While much if not all the clarification sought by the Committee may be intended to be contained in the CCC's further report to Parliament, the Committee considers that in order to properly achieve public interest closure on this allegation, it should direct the Acting Parliamentary Inspector to seek clarification from the CCC on a number of specific issues and then submit a further report to the Committee.

As the parliamentary oversight body, the Committee's responsibility is to ensure that the processes of the CCC and the Acting Parliamentary Inspector in undertaking a review were appropriate. The Committee notes that the independent Acting Parliamentary Inspector, Hon. Graham Scott, concurs with the CCC's opinion that:

...on the evidence before the Commission and following the Commission's assessment of it, the Commission's opinion is that Mr John D'Orazio did not engage in misconduct during the meeting at his office on the 25th day of August 2003.³

Therefore, pursuant to s.195(2)(d) of the Act, the Committee requests the Acting Parliamentary Inspector to report to the Committee on the following:

- a. Ascertain when a more formal and extensive report by the CCC to the Parliament will be finalised;
- b. Clarify the basis upon which he was satisfied with the CCC's assertion that prior to 22 February 2006:

Mr D'Orazio was not the subject of any adverse information or finding within this Commission nor, to the best of the Commission's knowledge and belief, in the holdings of the prior Anti-Corruption Commission.⁴

- c. Clarify that:

The term "Godfather" used by Ms Chong alone and only once at the public hearing was a throw away line and was not intended nor did it have any further meaning or significance.

² Kevin Hammond, Transcript of Evidence, 19 October 2005, p.5.

³ Corruption and Crime Commission of Western Australia, *Report in the Matter of an Allegation Concerning the Honourable John D'Orazio MLA*, 3 March 2006, paragraph 18.

⁴ *Ibid*, paragraph 3.

In particular, the Committee requests the Acting Parliamentary Inspector to advise it of the basis upon which he accepted the Commission's opinion as to the intent or significance of Ms Chong's choice of phrase; and

- d. Clarify the basis upon which he was satisfied with the CCC's decision that:

Clearly then there is a divergence in the evidence as to whether or not the business arrangements were discussed inside Mr D'Orazio's office. It is not appropriate, nor necessary, for the Commission to resolve this inconsistency in the evidence...⁵

In particular, the Committee requests the Acting Parliamentary Inspector to advise whether he considers that the CCC should have sought to resolve the inconsistency in the evidence before it.

The Committee requests the Acting Parliamentary Inspector to provide his further report to the Committee on or after 1 May 2006.

⁵ *Ibid*, paragraph 17.

APPENDIX ONE

WITNESSES TO HEARINGS

Date	Name	Position	Organisation
22 March 2006	Mr Graham Scott	Acting Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission

APPENDIX TWO

ACTING PARLIAMENTARY INSPECTOR'S REPORT IN THE MATTER OF AN ALLEGATION CONCERNING THE HONOURABLE JOHN D'ORAZIO MLA

Please note:

At the hearing on 22 March 2006, the Acting Parliamentary Inspector amended his report to insert the word "only" in paragraph 23 between the words "not" and "appropriate".

Paragraph 23 should now read:

In all of the circumstances therefore I am of the opinion that the Commission's conclusion was not only appropriate but inevitable.

REPORT
IN THE MATTER OF
AN ALLEGATION CONCERNING
THE HONOURABLE JOHN D'ORAZIO MLA

1. At the request of Mr M J McCusker AO QC I have reviewed the Corruption and Crime Commission report and files relating to the matter concerning Mr D'Orazio.

2. Mr McCusker has disqualified himself from dealing with these matters under the provisions of Section 195(3) of the *Corruption and Crime Commission Act 2003* ('the CCC Act').

3. In reviewing the matter, I am aware of the powers granted by Parliament to the Parliamentary Inspector under the provisions of Section 196 of the CCC Act. Pursuant to Section 196(3) (a) and (b) I have obtained full access to the records of the Commission and have been provided with all of the necessary papers to enable me to carry out the functions provided for in Section 195 of the CCC Act.

4. On 14 March 2008 I attended the offices of the CCC in St George's Terrace, Perth where I inspected the file and the papers made available to me by the officers of the Commission. As I have indicated I also had access to the report of the Commission dated 3 March 2006.

5. As a preliminary matter it is important to note that criminal proceedings are, as I understand it, pending against Mr Adam Amadeo Spagnolo ('Mr Spagnolo'). Because of the risk that the fair trial of Mr Spagnolo may be prejudiced, the evidence in relation to this matter is set out in summary form only in order to provide an understanding of the background to this investigation.

6. The files reveal that Pasquale Antonio Drago ('Mr Drago') was the proprietor of a carpet business trading under the name of 'Corporate Carpets'. Mr Drago and Mr Spagnolo had been friends for a long time. Mr Spagnolo wanted his son Emilio ('Mr Emilio Spagnolo') to work for Mr Drago's company. Mr Spagnolo had been involved in business transactions with Mr Drago. It was agreed that Mr Emilio Spagnolo would be employed. The file indicates that his work initially consisted of driving for Mr Drago. This lasted for six to seven months. Mr Emilio Spagnolo was paid poorly, and this was a matter of concern to Mr Spagnolo.

7. Mr Spagnolo was anxious to have his son Emilio not only work for the business but, because Mr Spagnolo had sent clients to Mr Drago, he wanted his son to have a share in it. Negotiations commenced between Mr Spagnolo and Mr Drago for Emilio Spagnolo to obtain a percentage of the business. There were discussions about an appropriate percentage and initially offers of 10% and 20% were made to Mr Emilio Spagnolo but those offers were rejected. Mr Emilio Spagnolo wanted more than 20% of Mr Drago's business.

8. Mr Emilio Spagnolo decided to set up his own carpet business under the name of 'Goldwater'.
9. There is some dispute about the matter but it would appear that Mr D'Orazio was spoken to by Mr Spagnolo with a view to Mr D'Orazio acting as a mediator to try to reconcile the dispute.
10. The file does not indicate the exact date upon which the meeting occurred but it would appear that there was a brief meeting (some 15 to 20 minutes) when Mr D'Orazio was present with Mr Tony Drago and Mr Spagnolo.
11. The evidence indicates that Mr D'Orazio's acted as a mediator. His attention was directed towards solving the dispute between the parties outlined earlier in these reasons. Mr D'Orazio said in his evidence that he was not concerned about the business or who finished up with what shares. His sole purpose was to try and reconcile the dispute between his two friends.
12. It appears to be common ground that after the initial meeting at which Mr D'Orazio was present a further meeting occurred between Mr Spagnolo and Mr Drago. Further discussions took place. It was agreed that the two businesses, that is the original business of Corporate Carpets run by Mr Drago and the new business owned by Mr Emilio Spagnolo (Goldwater) would amalgamate under the business name of Corporate Carpets. The business Corporate Carpets would be a partnership on a 50/50 basis. Corporate Carpets, which was owned by Mr Drago via the company 'Bridgewater

Enterprises Pty Ltd', would be a 50% shareholder. Mr Emilio Spagnolo's company 'Goldwater Corporation Pty Ltd' was to be the other 50% shareholder.

13. There is a great deal more background material in the files, some of which trespasses upon the charges pending against Mr Spagnolo. It is not necessary to further examine the background because to do so may involve a revelation of evidence that may possibly emerge in the criminal proceedings.

14. It is sufficient for the purposes of these reasons to say that those allegations arise out of the tendering process and the manner by which Corporate Carpets obtained work from the Bayswater Shire Council.

15. It should also be mentioned that in the course of proceedings before the Commission Counsel on behalf of the Commission referred to Mr D'Orazio as 'the Godfather'. That reference was in the context of Mr D'Orazio acting as the mediator between the Spagnolo interests and the Drago interests in the course of the meeting to which I have referred.

16. I have read the transcript of those proceedings and I have read the context in which the term 'Godfather' was used. I am not persuaded on reading that transcript that anything sinister was meant by the use of that term. Mr D'Orazio acted as a mediator between Mr Spagnolo and Mr Drago. His attitude throughout the course of events was reconciliatory. It is clear that he was trying to resolve the dispute between those parties.

17. It is unfortunate that the newspaper articles which I have read have emphasised the use of the term 'Godfather'. The labelling of Mr D'Orazio in that manner was not appropriate. That is not a criticism of Counsel because Counsel occasionally use terms which, at the time, are seen as being appropriate. In retrospect, however the reference to 'the Godfather' was unfortunate.
18. In considering this matter, I considered the definition of 'misconduct' in Section 4 of the *Corruption and Crime Commission Act*. I have taken into account particularly the provisions of Section 4(d)(i) to (iv). I am also aware of the explanation of the term 'misconduct' as referred to by Chief Justice Malcolm in *Willers v R 1995 125 FLR 221*.
19. I would add that I am aware of the intercepted telephone call recorded by the Commission on 22 August 2003. That call was between Mr D'Orazio's and Mr Spagnolo. There is nothing in the call which indicates any impropriety on the part of Mr D'Orazio. It is not necessary to refer to that matter further.
20. I note and accept the findings of the Corruption and Crime Commission in the report of 3 March 2006 that it was only at the meeting outside Mr D'Orazio's office that the question of the business arrangements between Mr Emilio Spagnolo and Mr Drago were discussed. Mr D'Orazio was not a party to that conversation. There is no evidence to suggest that Mr D'Orazio was in any

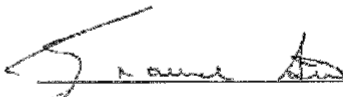
way involved in assisting, promoting or promising assistance in obtaining work from the City of Bayswater.

21. Having taken all of these matters into account I have come to the conclusion that the Commission was correct in resolving not to take this matter further.

22. The mere fact that there are differences between evidence given by a witness on one occasion and another, is not of itself a basis, to conclude that one version is wrong. In this case, in my opinion, it is important that all of the evidence be viewed in its context and when so viewed there is little conflict in the evidence.

23. In all of the circumstances therefore I am of the opinion that the Commission's conclusion was not appropriate but inevitable.

24. I am of the opinion that this matter should not be taken any further.



ACTING PARLIAMENTARY INSPECTOR