



CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

REPORT

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

DATED 3 MARCH 2006

1. The purpose of this public hearing is to enable the Corruption and Crime Commission ('the Commission') to report its opinion and decision with respect to allegations that misconduct by certain public officers, arising out of a meeting between Pasquale Antonio Drago ('Mr Drago'), Adam Amadeo Spagnolo ('Mr Spagnolo') and John D'Orazio ('Mr D'Orazio') in about August 2003 and referred to in the evidence given by Mr Drago before the Commission on 14 June 2005, has or may have occurred.
2. The Commission has taken this step to pronounce its opinion and decision at a public hearing because of the very considerable public interest associated with this matter. Thus, as the Act provides, I have weighed the benefits of public exposure and public awareness against the potential for prejudice and privacy infringements and consider that it is in the public interest to open this hearing to the public.

3. It is important at the outset to note that the Commission's involvement in the assessment of any allegations concerning Mr D'Orazio commenced on Wednesday 22 February 2006 following the publication of an article in the *West Australian* of that date. Prior to that date and publication, 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. 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. The issue at hand before the Commission is whether any public officer has engaged in misconduct or not and that is the matter which this Commission's report addresses this morning.
4. Upon noting the article in the *West Australian* of 22 February, the Commission commenced the process of making an assessment as to whether misconduct has or may have occurred.
5. In order to deal with an allegation about misconduct the Commission, applying sections 32 and 22 of its Act, assesses the allegation and comes to an opinion as to whether misconduct has or may have occurred. Having formed an opinion as to misconduct, the Commission makes a decision, under section 33 of the Act, as to further action. The range of decisions as to further action include investigation of the allegation by the Commission itself - particularly if serious misconduct is involved, referral to another

agency, or to take no action. Under Section 32 of the Act, to assist in the assessment process, the Commission can use its coercive powers including the power to require the production to it of information, documents and things and the power to summons witnesses to attend and give evidence before it. The Commission applied these processes in its assessment of the allegations concerning Mr D'Orazio.

6. By way of history this Commission upon its inception in January 2004 inherited all of the investigations that its predecessor the Anti-Corruption Commission had been conducting. One of these matters was known as Operation Athens. This matter involved investigation of allegations of misconduct against Mr Spagnolo, a Councillor for the City of Stirling and an employee of the City of Bayswater. As part of the investigation process the Commission conducted a number of public examinations of witnesses. Mr Spagnolo has been formally charged as the result of evidence obtained during the investigation.

7. During the course of the Athens investigation the Commission determined based on additional information obtained to expand the scope of the investigation to "***make an assessment and form an opinion as to whether members, officers or employees of the City of Bayswater had or may have engaged in misconduct, with particular reference, but not limited to, the management and administration of contracts***

entered into by the City of Bayswater for the provision of goods and services to the City of Bayswater".

8. On 22 February 2006 as the result of material published by "*The West Australian*" relating to Mr D'Orazio, the Commission immediately moved to conduct an assessment of the published material in accordance with the Act and it utilised several of its powers to do so. It is important to note that one of the purposes of the Commission is to assess material that could suggest misconduct by a public officer. The fact that the Commission commences an assessment does not mean that the Commission has formed any view as to whether misconduct, has occurred, is occurring or will occur.

9. The assessment process took the following steps:
 - (1) The Commission considered the evidence provided by Mr Drago and Mr Spagnolo at the Commission's earlier public hearings associated with the tendering processes at the City of Bayswater.
 - (2) It considered the information provided in recent editions of the *West Australian* and other newspapers.
 - (3) The Commission reviewed material previously collected by the Anti-Corruption Commission.
 - (4) The Commission invited all three parties namely Mr D'Orazio, Mr Spagnolo and Mr Drago into the Commission for the purposes of formal

interview and each of those persons consented to be interviewed by Commission investigators.

(5) The Commission obtained and examined a recording of a conversation between Mr Spagnolo and Mr Robert Taylor provided by the West Australian.

(6) The Commission conducted private hearings on Wednesday 1 March 2006 where Messrs Drago and D'Orazio were examined on oath by Mr Brett Tooker, Counsel Assisting the Commission. I indicate here that normally, inter alia, any evidence given before the Commission, any information that might enable a person who has been examined before the Commission to be identified or located and the fact that any person has been examined before the Commission is 'restricted matter' and must not be disclosed. However, restricted matter may be disclosed in accordance with a direction of the Commission and, accordingly, in and because of the public interest circumstances obtaining in this matter, I DIRECT that any evidence given before the Commission by Messrs Drago and D'Orazio may be disclosed.

10. Although Mr Spagnolo was initially summonsed and in fact appeared at the Commission on 1 March 2006, the Commission decided that it would not proceed with a sworn examination of Mr Spagnolo due to the High Court's ruling in the case of *Hammond v Commonwealth of Australia* (1982) 42 ALR 327. In that case the High Court said that it is a principle deep-rooted in our law and history that the Crown should not subject an accused person to compulsory process to obtain his answers upon the issue of his

guilt of an offence with which he has been charged. The proposed examination of Mr Spagnolo would almost certainly have touched on issues relevant to the criminal proceedings which he presently faces. Because of that, and because Mr Spagnolo appeared without legal representation, the Commission took the view that it was unable to compel him to answer questions on oath.

11. The Commission considered a recording of a telephone call made on 22 August 2003 which call originated from Mr D'Orazio's office to Mr Spagnolo. This call was lawfully intercepted pursuant to a Court warrant issued to the ACC in relation to telephone services used by Mr Spagnolo. The Commission is satisfied that this call was made after Mr D'Orazio received a plea for assistance from Mr Drago because the long time association between Mr Drago and Mr Spagnolo had clearly broken down. It appears from Mr Spagnolo's own words in that recorded conversation that it broke down because of what Mr Spagnolo saw as unfair treatment of his son Emilio at the hands of Mr Drago. Emilio had gone to work for Mr Drago as a driver when Mr Drago's licence was suspended and was assisting him generally in his business. It was Mr Spagnolo's claim that he had not been properly paid and was being taken advantage of. Throughout this telephone call it is clear that Mr D'Orazio is attempting to mediate between these two people (Mr Spagnolo and Mr Drago) whose longstanding personal and family relationship going back many years had seriously broken down and suggested the parties meet for a coffee.

12. The next item of interest is the telephone call (lawfully intercepted) made from Mr D'Orazio's office to Mr Spagnolo setting up a time for a meeting at which Mr Spagnolo says he will 'reluctantly' attend. The meeting was held on Monday 25 August 2003 at Mr D'Orazio's office.

13. At the public hearing on 14 June 2005 Mr Drago gave evidence about this meeting between the three men. During his evidence he said that, "we met together and we sorted out the dispute we had, and I accepted the 50 per cent". At the private examination conducted on 1 March 2006 Mr Drago elaborated on the meaning of this passage. He told the Commission that the three of them had a meeting where personal issues were discussed. His evidence was that Mr D'Orazio encouraged them to sort out their differences. Mr Spagnolo and Mr Drago then went outside and this is where Mr Drago says that the business arrangements were discussed and the dispute sorted out. His evidence was that he agreed to the 50 per cent and the two men shook hands.

14. At his public examination on 15 June 2005 Mr Spagnolo gave evidence that he negotiated with Mr Drago on behalf of his son. There was no evidence that these negotiations were conducted in the presence of Mr D'Orazio. On 23 February 2006, Mr Spagnolo told the Commission that the meeting was about Emilio going out on his own and that the three men did discuss the business arrangements in the presence of Mr D'Orazio. Crucially, however, he categorically denied that during the meeting he promised to assist Mr Drago through his position at the City of Bayswater.

15. At the private examination on 1 March 2006 Mr D'Orazio categorically denied that any business arrangements were discussed at the meeting. He also categorically denied that Mr Spagnolo talked about using his position at the City of Bayswater to assist Mr Drago.
16. It is the sworn evidence of both Mr D'Orazio and Mr Drago that once there had been a degree of personal mediation facilitated by Mr D'Orazio in his office that the two parties, that is Mr Drago and Mr Spagnolo, went outside. It is the sworn evidence of Mr Drago that the two men discussed the business arrangements outside.
17. 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. What emerges from an assessment of all of the evidence, including that of Messrs D'Orazio, Drago and Spagnolo, is that there is no evidence of improper, illegal or corrupt deals discussed during the meeting between the three men.
18. Accordingly, 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.

19. That opinion having been formed, I now make the decision pursuant to Section 33 of the Act that the Commission takes no action.

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