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**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

**Report on an Investigation
into the Involvement of a CALM Officer
in the Oil Mallee Industry**

June 2005

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Hon Nicholas Griffiths MLC
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PERTH WA 6000

Hon Fredrick Riebeling MLA
Speaker
Legislative Assembly
Parliament House
PERTH WA 6000

Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003* I am pleased to present the Corruption and Crime Commission's report of an investigation into the involvement of a CALM Officer in the Oil Mallee Industry.

The opinions contained in this report are those of this Commission.

I recommend that the report be laid before each House of Parliament forthwith pursuant to section 93 of the *Corruption and Crime Commission Act 2003*.

Yours sincerely

Kevin Hammond
COMMISSIONER

24 June 2005

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1.0 Chapter 1 - Background to this Report

1.1 What is this Report About?

On 20 April 2004 the Corruption and Crime Commission of Western Australia (the Commission) received a telephone call from an ABC journalist enquiring into questions raised in the Legislative Council by the Hon Jim Scott. The issue concerned the Department of Conservation and Land Management (CALM) and the involvement of a Mr John Bartle (Bartle), an employee of CALM, with the bodies referred to by Mr Scott as "Oil Mallee Co" and "Oil Mallee Association".

The questions were put by Mr Scott to the Minister for Local Government and Regional Development (representing the Environment Minister) in the Upper House on 3 and 4 December 2003. In essence these inquired as to whether Bartle had an interest in the corporate bodies referred to above and, if so, what was the nature of such interest and was there a conflict of interest involved in the allocation of Oil Mallee seeds.

The Commission conducted an investigation into these allegations to determine if any "misconduct" as defined in the *Corruption and Crime Commission Act 2003* (the Act) had occurred. This report details the outcome of the Commission's investigations including its assessments, opinions and recommendations, and examines other related conduct.

In this report, The Oil Mallee Company of Australia Pty Ltd (Incorporated July 1997) is referred to as "OMC Pty Ltd". Its successor (as from 27 April 2001), The Oil Mallee Company of Australia Ltd is referred to as "OMC Ltd" and the Oil Mallee Association of Western Australia Inc. is referred to as "OMA".

1.2 Origin of the Investigation

Mr Keiran McNamara (McNamara), the Executive Director of CALM, formally notified the Commission of this matter, pursuant to section 28 of the Act.

Specifically, CALM referred the following allegations to the Commission:

- That Bartle had acted contrary to the instruction of the Executive Director in respect of the purchase of shares and the acceptance of a directorship of the OMC Pty Ltd and in doing so he had created a conflict of interest for himself and CALM in dealing with the OMC Pty Ltd.
- That a CALM grant of \$320,000 to the OMA in January 2003 may have been approved on the basis of false information provided by OMC Ltd to which Bartle may have been a party.
- That Bartle may have inappropriately used his position at CALM to influence the direction of funds from CALM to the OMA and OMC Ltd.
- That Bartle may have facilitated the distribution of oil mallee seed by CALM to the OMA in 2003, to ensure that a pending decision from the Crown Solicitor's Office (now the State Solicitor) relating to the method of oil mallee seed distribution would not adversely affect the OMA or the OMC Ltd.

After assessing the above matters, the Commission decided to investigate, pursuant to section 33 (1)(a) of the Act.

1.3 Jurisdiction

CALM is a department as defined in the *Public Sector Management Act 1994* and misconduct of its officers falls within the jurisdiction of the Commission for the following reasons:

- Section 4 of the Act defines those actions on the part of public officers that constitute misconduct and sub section 6(1) states that the Commission may receive information and otherwise perform its functions in relation to acts, omissions or conduct alleged to have been done, omitted or engaged in by a person who was a public officer at the time of the alleged acts, omissions or conduct even if the person has ceased to be a public officer; and
- The term 'public officer' is defined in section 3 of the Act by reference to section 1 of the *Criminal Code 1913* and includes a person exercising authority under written law and also a public service officer or employee within the meaning of the *Public Sector Management Act, 1994*.

As an officer of CALM Bartle is a public officer for the purposes of the Act.

1.4 Scope of Inquiry

The jurisdiction of the Commission is limited to investigating misconduct by public officers, as defined under section 4 of the Act. It does not extend to investigating the conduct of privately employed or self-employed people such as those employed by the OMA or the OMC Ltd.

1.5 Conflict of Interest

For the purposes of this report, it is appropriate to adopt the definitions of a conflict of interest in the glossary to the joint report of the Independent Commission Against Corruption (NSW) and the Crime and Misconduct Commission (Queensland) contained in the publication *Managing Conflicts of Interest in the Public Sector*, published in November 2004.

The following definitions are in that report and are adopted for present purposes.

- **Conflict of Interest:** A conflict of interest involves a conflict between a public official's duties and responsibilities in serving the public interest, and the public official's private interests. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.
- **Apparent Conflict of Interest:** An apparent conflict of interest exists where it appears that a public official's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- **Perceived Conflict of Interest:** See 'Apparent Conflict of Interest'. The two terms are interchangeable.
- **Potential Conflict of Interest:** A potential conflict of interest arises where a public official has private interests that could conflict with their official duties in the future.

1.6 Use of Commission Powers

1.6.1. Notices to Produce

The following notices to produce documents and/or things under the Act were issued during this investigation:

- a. **Section 95 Notice**, dated 24 April 2004 served on the OMC Ltd Property Officer to produce records relating to the operations of the OMC Ltd and the OMA, including minutes of meetings, details of shareholders, acquisitions and distribution of oil mallee seeds, grants provided to them through CALM and the National Heritage Trust and documentation relating to John Bartle and his immediate family members.
- b. **Section 100 Notice**, dated 5 July 2004 served on McNamara, authorising entry to CALM premises, inspection and copying of information contained on the CALM administration server.

Documents were obtained from the following sources:

- CALM, in relation to Bartle's involvement with the OMA, OMC Pty Ltd and OMC Ltd.
- CALM, in relation to enquiries conducted by it and action taken with respect to Bartle's directorship and shareholding in the OMC Pty Ltd.
- Information contained on the administration server at CALM in relation to word documents and emails received and generated by Bartle. Records were only available from January 2004.
- Information contained on a personal laptop computer used by Bartle as a CALM employee. Access to Bartle's computer was obtained with his consent.
- CALM, in relation to the application and payment of \$320,000 to the OMA in 2002/2003 and the application and payment of other funds previously paid to the OMA, the OMC Pty Ltd and OMC Ltd.
- CALM, in relation to the distribution of improved oil mallee seed in 2003.
- OMC Ltd - Minutes of Board Meetings and other documentation.

c. Other Reference Material

- Public Sector Code of Ethics for State Government employees.
- Code of Conduct for CALM employees.

1.6.2. No hearings were conducted during the investigation.

2.0 Chapter 2 – Investigation into the Allegations

2.1 The Oil Mallee Industry

What could be termed “The Oil Mallee Industry” appears to have had its origin about 1984 when a group of farmers started making oil from Mallee Eucalypts on their farms, with the aim of providing a commercial tree crop for farmland hopefully to arrest the accumulation of ground water, the principal cause of soil salinity in the wheat belt of Western Australia.

During the early 1990s CALM, in conjunction with farmers, commenced a genetic improvement program for a range of Mallee Eucalypt species. Bartle was the CALM representative and prime motivator of this program.

Since that time, the Oil Mallee Industry, CALM, private investors and Commonwealth and State agencies have invested in a range of programs aimed at further researching the environmental benefits of Mallee Eucalypts.

Oil Mallee trees are a group of species of Eucalypts that are planted in salt affected farmland to reduce the salinity problems within areas of WA. Seed for the trees is grown by CALM and subsequently sold to nurseries, which, in turn, grow seedlings for sale to farmers. The seed was also distributed to farmers through the OMA. However, this practice has now changed and seeds are distributed and sold through public tender co-ordinated by CALM and the Department of Premier and Cabinet.

2.2 OMA and OMC

The OMA was established in 1995 by a group of farmers to promote the oil mallee industry. Between 1996 and 1998 the OMA explored and developed options for a commercial structure for the industry.

In 1997, OMC Pty Ltd was established to be the commercial arm of the OMA to promote the growing and distribution of oil mallee seedlings. Until 2003 the OMA was the sole distributor of the oil mallee seedlings in Western Australia. OMC Pty Ltd was formed with some existing directors from the OMA and other members of the farming community.

Ric Collins (Collins) was the administrator of the OMC Pty Ltd between 1996 and 2001.

Sydney Shea (Shea), was the Executive Director of CALM until November 1999. He resigned from the WA Public Service in June 2000 and was appointed to his current position as Chairman of OMC Ltd on 3 July 2000.

2.3 John Bartle

Bartle was the Manager of the Farm Forestry Unit at CALM. According to Shea, Bartle was instrumental in gaining the confidence and support of a core group of farmers and helped to establish the OMA.

During the period that the OMC Pty Ltd was being established, Bartle sought permission from Shea to become a director of the company. That permission was granted on the provision that Bartle excuse himself from board meetings during discussion on matters where there was a question of conflict or perceived conflict of interest and, further, that he receive no remuneration for his services.

Bartle sought further advice from Shea as to whether CALM would consider becoming a partner with OMC Pty Ltd. Shea determined that it was not appropriate for a government agency to become involved with a private company in that way. In further discussions with Shea, Bartle sought permission to gift

\$10,000 (as opposed to being allocated shares in return) of his personal funds to the OMC Pty Ltd to assist in establishment of the company. Shea gave a verbal instruction that Bartle was not to be allocated shares or invest in the company.

This investigation has shown that there appears to be no written record or formal direction given to Bartle by Shea detailing the outcome of these discussions.

2.4 Bartle's Directorship and Shareholding in OMC

Bartle was appointed to the Board of Directors of the OMC Pty Ltd in May 1998. In line with other Directors he paid \$10,000 to the OMC Pty Ltd and in return was allocated shares in the company. Shea had not given permission for him to hold shares in the company and Ric Collins offered to hold the shares in trust for him by virtue of a Deed of Trust. The deed provided for Bartle to remain the beneficiary of the shares while they were held in trust by Collins.

In 2001, Collins requested that Bartle assume responsibility for the shares. Bartle subsequently transferred the shares to the OMA as a gift and relinquished all rights to the shares in 2002. In order to do that, he sought professional legal advice and documentation exists to support that this occurred. The shares are now the property of the OMA.

After the OMC Ltd was established, an Offer Information Statement published in July 2001 and distributed to prospective shareholders listed Bartle as a non-executive director with his position shown as Manager, CALM, Farm Forestry Unit.

When McNamara became aware of the Offer Information Statement published by OMC Ltd in August 2001, he notified Bartle in writing on 3 August 2001 that it was inappropriate for him to hold a position on the Board of the company as there appeared to be a significant apparent conflict of interest between his role and responsibilities with

CALM, and his role and responsibilities with the company. He directed Bartle to resign his position from the Board.

Bartle formally resigned from the OMC Ltd Board of Directors on 6 August 2001.

Bartle's shareholding in the company was a clear breach of Shea's instruction and a breach of CALM's Code of Conduct which states that employees should exclude themselves from any activity in which they have an actual or a potential conflict of interest.

However, the Commission did not find any evidence that Bartle or OMC Pty Ltd or OMC Ltd benefited from Bartle being a CALM employee.

Evidence from various witnesses support Bartle's explanation that he invested money in the company because of his intense long-term interest and commitment to the research and development of commercial crops to counteract soil salinity. Bartle's shareholding, in breach of Shea's direction, is an apparent conflict of interest but does not amount to misconduct pursuant to the Act.

Bartle's role as director of OMC Pty Ltd was approved by Shea although the Commission has found no evidence that permission to undertake the directorship was granted in writing as required by the *Public Sector Management Act 1994*.

CALM's Code of Conduct permits an employee to work outside the department provided there is no conflict of interest and permission in writing is obtained from the Executive Director.

Bartle's directorship created a conflict of interest, however, as Shea had granted him permission to hold the directorship, Bartle cannot be held responsible for Shea's decision, inappropriate as it may have been. As soon as Bartle was informed by McNamara that his directorship was inappropriate, he resigned.

Bartle continued to deal with OMC Ltd in his position as a CALM employee following his resignation as a director. The Commission has found no evidence that Bartle continued to act as a defacto director upon his resignation although he did continue to provide professional advice to the OMC Ltd.

2.5 Grant of \$320,000 from CALM to OMC Ltd

On 9 February 2002 a grant of \$320,000 was paid by CALM to OMA. The grant was authorised by McNamara on the advice of a taskforce external to CALM and established to examine, *inter alia*, soil salinity. Bartle, in his position at CALM, provided advice to the membership of the taskforce; however, the taskforce's final recommendation/advice and the Executive Director's decision with respect to funding, were not made by Bartle.

With respect to the allegation that a grant of \$320,000 provided to the OMA/OMC Ltd by CALM may have been approved on the basis of false information provided by the OMA/OMC Ltd, to which Bartle may have been a party, the investigation has found no evidence of misconduct committed by Bartle.

Bartle provided advice to the OMA in preparing a submission for the \$320,000 grant, and may also have provided advice to McNamara and other members of the task force in relation to the submission subsequently received from the OMA/OMC Ltd. The Commission is of the opinion that this is an apparent conflict of interest. However, no evidence is available to substantiate misconduct pursuant to section 4 of the Act.

2.6 Distribution of Oil Mallee Seed by CALM to OMA in 2003

Allegations have been made that Bartle may have facilitated the distribution of oil mallee seed by CALM to the OMA in 2003 so as to ensure that a pending decision from the then Crown Solicitor's Office relating to the distribution of seed would not adversely affect the OMA or OMC Ltd.

Prior to 2003, CALM distributed all its oil mallee seed through the OMA which then distributed the seed to nurseries.

In October 2003 CALM sought advice from the Crown Solicitor's Office with regard to the method of seed distribution being used by CALM, specifically whether they were in breach of the Trade Practices Act by distributing oil mallee seed solely through the OMA. While awaiting receipt of formal advice from the then Crown Solicitor, Bartle continued to distribute seed in the normal manner and was of the understanding that the then Crown Solicitor's office had no problem with the practice.

However, there appears to have been a misunderstanding between Bartle, Mark Brabazon (Brabazon), Assistant to the Executive Director of CALM, and representatives from the Crown Solicitor's Office, about the interim procedures that were to be followed for providing seed to the OMA, pending receipt of the legal advice by CALM. Brabazon became concerned that seed had been distributed following the meeting with the then Crown Solicitor's Office. He instructed Bartle to cease distribution.

There is no evidence to suggest that Bartle did not follow this instruction.

3.0 Chapter 3 – Summary, Commission’s Opinion and Recommendations

3.1 Summary

Bartle’s purchase of \$10,000 worth of shares in OMC was contrary to the Executive Director’s direction and a clear breach of CALM’s Code of Conduct (refer para 2.3). The Commission is of the opinion that Bartle’s shareholding amounts to an apparent conflict of interest but does not amount to misconduct within the definition of the Act.

Although Bartle was authorised by the Executive Director to become a director of OMC Pty Ltd, such authorisation was clearly an error of judgement and in breach of CALM’s Code of Conduct. This placed Bartle in an invidious position giving rise to an apparent conflict of interest (refer para 2.3).

The Commission’s investigations did not uncover evidence that Bartle played any role in the final decision with respect to the grant of \$320,000 or any other grants by CALM to OMA or the OMC Ltd (refer 2.5). However, Bartle provided professional advice to members of the Taskforce and the Executive Director in relation to the grant of \$320,000, and also in relation to other grants previously paid by CALM to the OMA and OMC Ltd.

The Commission’s investigations found no evidence that Bartle facilitated the distribution of oil mallee seed to OMA to circumvent a pending advice from the Crown Solicitor’s Office.

3.2 Commission’s Opinion

3.2.1. In relation to the allegation with respect to Bartle’s Shareholding and Directorship of OMC:

The Commission is of the opinion that with regard to Bartle holding the position of non-executive Director of the OMC Pty Ltd and then OMC Ltd, no evidence of misconduct under the Act has been found. However, there clearly exists an apparent conflict of interest in Bartle holding such a position on the board of a private company with which he dealt closely as part of his position at CALM.

Evidence obtained during the investigation establishes that Shea gave Bartle permission to take a position on the Board of the OMC Pty Ltd.

The Commission is of the opinion that Bartle holding shares in the OMC Pty Ltd contrary to advice given by Shea, does not amount to misconduct pursuant to section 4 of the Act. No evidence has been found to substantiate an allegation that his conduct adversely affected the honest or impartial performance of his functions as a public officer.

3.2.2. In relation to the allegation with respect to the grant of \$320,000, the provision of false information, inappropriate use of position and the distribution of oil mallee seed:

The Commission is of the opinion that evidence obtained during the investigation does not support an allegation that Bartle has engaged in ‘misconduct’ within the definition of the Act.

3.2.3. In relation to CALM's internal policies, processes and procedures

The Commission is of the opinion that CALM's internal policies, processes and procedures do not adequately address the management of actual, apparent or potential conflicts of interest in relation to the allocation of funds to external agencies.

3.3 Commission's Recommendations

Recommendation 1:

CALM should establish appropriate policies, processes and procedures to enable its staff to meet their responsibilities for managing actual, apparent and potential conflicts of interest.

Recommendation 2:

CALM's Code of Conduct should address the responsibility of its staff with regard to actual, apparent and potential conflict of interests.

Recommendation 3:

CALM should ensure that its staff acknowledge in writing that they are aware of, and will comply with, its Code of Conduct.

Recommendation 4:

CALM should require staff that negotiate contracts of a pecuniary nature with commercial interests to submit annually a Declaration of Personal Material Interest to the CEO.