



CORRUPTION AND CRIME COMMISSION

Report on an Investigation into Inappropriate Associations between Western Australia Police Officers and Pasquale Minniti

21 December 2007

Hon Nicholas Griffiths MLC
President
Legislative Council
Parliament House
PERTH WA 6000

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

Dear Mr President

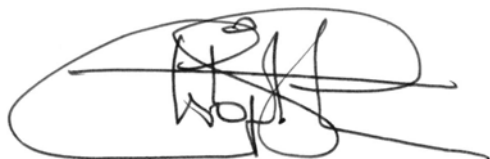
Dear Mr Speaker

In accordance with sections 84 and 93 of the *Corruption and Crime Commission Act 2003*, the Commission is pleased to present the Corruption and Crime Commission's Report on an Investigation into Inappropriate Associations between Western Australia Police Officers and Mr Pasquale Minniti.

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

The Commission recommends that the report be laid before each House of Parliament forthwith pursuant to the *Corruption and Crime Commission Act 2003*.

Yours faithfully

A handwritten signature in black ink, appearing to be 'CP Shanahan', enclosed within a large, loopy oval shape.

CP Shanahan SC
ACTING COMMISSIONER

14 December 2007

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EXECUTIVE SUMMARY

In September 2005, the Commission received information that a number of Western Australia Police (WAPOL) officers had formed, and were participating in, a network of inappropriate relationships with members of the public, including Mr Pasquale Minniti, a Bayswater panel beater. These relationships involved the provision of confidential police information and inappropriate assistance by police officers to members of the public. On 21 September 2005, after an initial assessment of these allegations, the Commission undertook an investigation.

The Commission's investigation included the analysis of documents, execution of search warrants, and investigations incorporating lawful telecommunication interceptions, surveillance, and liaison and cooperation with the WAPOL Internal Affairs Unit. In addition, the Commission conducted both private and public hearings.

The investigation revealed that Mr Pasquale Minniti, the proprietor of an established panel beating business and used car yard located in Bayswater, had, over a number of years, deliberately cultivated relationships with police officers in order to receive illicit assistance and unauthorised services.

Unauthorised services or illicit assistance provided to Mr Minniti by serving police officers included:

- the provision of confidential information from the WAPOL computer, that was then used for various purposes, including in one instance where confidential information was sought and obtained at the request of a prisoner on remand for a serious offence;
- the withdrawal of traffic infringements legally issued to associates of Mr Minniti;
- taking Mr Minniti on patrol in police vehicles, providing him with 'lifts' and running 'errands' for him and his associates;
- the use of police officers to target and potentially harass members of the public at Mr Minniti's request;
- extraordinary assistance from police officers regarding the preparation of correspondence, applications, and other paperwork related to traffic infringements for Mr Minniti;
- providing information to Mr Minniti on police practices, policies, and procedures, including confidential information about the location and operation of random breath testing units; and
- providing Mr Minniti with police accoutrements and equipment including police issue hats and badges.

The development of inappropriate relationships with police officers by Mr Minniti was a lengthy, deliberate and calculated process, which generated a 'network of police friends', (a 'network'), which Mr Minniti actively cultivated. His nickname of 'Inspector Minniti' was given to him by a police officer. A nickname he adopted and promoted, often referring to himself as 'Inspector Minniti' when acting as a conduit between his friends, associates and police officers. Over time, even people outside the WAPOL came to identify Mr Minniti as 'Inspector Minniti', and some police officers actively supported and perpetuated this charade.

Friends and associates of Mr Minniti viewed him as a person who could assist them with police related issues, a proposition that was confirmed in the course of the Commission's public examinations. Mr Minniti's conduct in this regard and the 'misconduct' by police officers that supported it, is in the Commission's view, the core issue identified during this investigation. This report examines how Mr Minniti generated the perception that he could assist with police related issues and the conduct by public officers that allowed Mr Minniti to foster it.

In the Commission's opinion Mr Minniti built inappropriate relationships with police officers deliberately for his own benefit, and, at times, acted as a predator, exploiting vulnerable police officers once they were indebted to him. He groomed new contacts in the WAPOL by encouraging them to engage in seemingly minor and innocuous yet inappropriate activity. Such activity was often the first step towards seriously compromising these officers.

The investigation revealed that some police officers were unable to separate their personal relationships with Mr Minniti from the performance of their professional duties and official functions.

In addition to the allegations of "misconduct" against police officers dealt with by the Commission, other matters relating to possible criminal conduct involving individuals other than public officers were identified. Most significant of these was the conduct of Mr Minniti who has since been charged with five counts of corruption, one of making a false declaration, another of making a false statutory declaration and one of attempting to induce a witness to give false testimony before the Commission.

During the course of the investigation the Commission became aware of contact between Mr Minniti and Mr John D'Orazio BSc (Pharm.) MPS, the Member for Ballajura in the Legislative Assembly of the Parliament of Western Australia, who has served as:

- Minister for Justice and Small Business from 10 March 2005 until 3 February 2006;
- Minister for Police and Emergency Services, Justice and Community Safety from 3 February 2006 until 8 May 2006, when he was removed from the Police and Justice Portfolios by the

Premier and made Minister for Disability Services; Citizenship and Multicultural Interests; Seniors and Volunteers, and

- Minister for Disability Services; Citizenship and Multicultural Interests; Seniors and Volunteers on 8 May 2006 before resigning on 9 May 2006.¹

The Commission is acutely aware of the potential in public hearings to unfairly damage the reputation of individuals. Public hearings are only held when, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it is considered that it is in the public interest to do so. The Commission considered that there were four reasons why Mr D'Orazio should be summonsed to a public hearing:

- (1) at the time the Commission had lawfully intercepted a telephone conversation between Mr Minniti and Senior Constable Silvestri, who worked at WAPOL Infringement Management and Operations, in which they talked about Mr D'Orazio's concerns regarding alleged traffic infringements; a telephone intercept which the Commission intended to adduce in public hearings in relation to Senior Constable Silvestri and Mr Minniti – which meant that Mr D'Orazio would necessarily be named during a public examination;
- (2) the Commission did not know what had been said at a meeting between Mr Minniti and Mr D'Orazio on 10 May 2006;
- (3) the Commission needed to ensure that the facts presented relevant to Mr D'Orazio did not paint a partial picture and that it obtained a full account of the circumstances as they involved Mr D'Orazio, and
- (4) Mr D'Orazio was Minister for Police and Minister of Justice until 8 May 2006 and remained a Minister of the Crown until 9 May 2006, a further matter that highlighted the public interest in conducting any hearing in public.

The initial telephone contact between Mr Minniti and Mr D'Orazio was made by Mr Minniti on the evening of 8 May 2006 the day Mr D'Orazio was removed from the Police and Justice Portfolios, albeit he continued to be a Minister of the State.

It occurred at a time when Mr D'Orazio was receiving significant adverse media publicity about allegations that he drove a motor vehicle when his licence had been suspended due to allegations of non-payment of fines.

¹ WA, *Personal Explanation*, Legislative Assembly, 9 May 2006, P.2346 (John D'Orazio). Premier's Media Statement, dated 8 May 2006. Refer Appendix A.

The investigation revealed that Mr Minniti was attempting to assist Mr D'Orazio in his attempts to deal with these allegations.

Mr D'Orazio discussed these matters with Mr Minniti. He had a private meeting with Mr Minniti. Mr D'Orazio provided Mr Minniti with information regarding his traffic infringements and the date of a facsimile that Mr D'Orazio was seeking to locate at the Department of Planning and Infrastructure ("DPI"). Mr D'Orazio did not actively or unequivocally discourage Mr Minniti's offers of assistance and this left him open to a perception of "misconduct".

After "assessing" all the material obtained during the course of the investigation, including telecommunications interceptions, the Commission is of the opinion that Mr D'Orazio's actions do not amount to "misconduct" as defined by section 4 of the *Corruption and Crime Commission Act 2003* (the CCC Act) in respect to these matters.

There is no evidence to support a conclusion that Mr D'Orazio has acted corruptly or that he has engaged in conduct that could constitute an offence or a disciplinary offence providing reasonable grounds for termination under the Public Sector Management Act 1994 (PSMA). However the Commission considers that Mr D'Orazio's conduct as a Minister and later as a Member of the Legislative Assembly in respect of Mr Minniti's offers to assist him in respect of his traffic infringements, as identified in this report, was inappropriate.

As a result of its investigation, the Commission formed the opinion that two police officers, Senior Constable Arduino Silvestri and Sergeant Bill Harrison, engaged in misconduct. Senior Constable Silvestri has indicated a plea of not guilty to five counts of corruption. Sergeant Harrison has resigned from WAPOL and was charged with two counts of witnessing a false statutory declaration to which he pleaded guilty and received a 12 month suspended sentence and a \$6,000 fine. He also received a 10 month suspended sentence and a \$5,000 fine when he pleaded guilty to unlawfully using a restricted access computer. Mr Minniti has been charged with eight offences, including five of corruption, and five other non-public officers have been charged with a total of 11 offences.

In addition to identifying "misconduct" by police officers, the investigation identified deficiencies in WAPOL procedures and practices. These deficiencies included those related to the process by which infringements may be withdrawn and how confidential information may be accessed from the police computer.

The report has made five Recommendations, which are:

1. WAPOL undertakes a comprehensive audit of the Traffic Office to determine whether misconduct by others, similar to that identified by the Commission's investigation, has occurred.

2. WAPOL reviews the policies and procedures relevant to the operations of the Traffic Office in order to ensure that policies and the relevant sections of the Code of Conduct are understood and applied according to law, particularly with regard to:-
 - 2.1 actual, potential and perceived conflicts of interest; and
 - 2.2 access to confidential information.
3. WAPOL reviews its policies and systems to ensure that the issues of unauthorised access and disclosure of confidential WAPOL information and the establishment of inappropriate relationships are adequately addressed.
4. WAPOL undertakes a review of its computer systems to be completed within two years to ascertain if it is providing the audit capacity required, and that it identifies any deficiencies, and reports on the findings of its review and any remedial action in its Annual Report.
5. WAPOL policies and procedures be reviewed to ensure that they:
 - 5.1 discourage officers from dealing with inquiries involving or referred to them by their family, friends or associates, and that procedures are in place to manage circumstances where such dealing is unavoidable as a matter of necessity only;
 - 5.2 require the police officer who makes the final decision to withdraw a traffic infringement to be a different and more senior police officer to the officer who recommends that the matter be withdrawn, and that all reasons for withdrawal are fully documented; and
 - 5.3 ensure that when a police officer writes, types or dictates statutory declarations, auditable documentation of the reasons for his or her doing so is provided.

The Commission acknowledges that WAPOL has begun to take steps to address deficiencies in its processes and procedures, and has implemented a new computer system that is designed to reduce the risk of a recurrence of the misconduct identified in this report. Constant vigilance in this regard is required.

The Commission also acknowledges that WAPOL has restated its commitment to a 'no tolerance' approach with regard to the accessing and release of confidential police information and a focus on issues surrounding unauthorised computer use or misuse. WAPOL's action in charging officers who have accessed and/or disclosed information when not authorised to do so signal its determination to address such transgressions.

CHAPTER ONE – INTRODUCTION

1.1 Nature of This Investigation

In September 2005, the Commission received information that a number of serving Western Australia police officers (WAPOL) had formed a network of inappropriate relationships with members of the public, and had provided confidential police information and inappropriate assistance to those individuals. On 21 September 2005 after an initial “assessment” of these allegations, the Commissioner decided to investigate the information received pursuant to section 33(1)(b) of the *Corruption & Crime Commission Act 2003* (CCC Act).

The purpose of the investigation was to “assess” the “allegations” and form an “opinion” as to whether “misconduct” “had occurred, is or may be occurring, or may be about to, or is likely to occur”. It included, but was not limited to, whether any police officer or any other person had corruptly obtained, or attempted to corruptly obtain, the withdrawal of lawfully issued traffic infringement notices without authority, and whether any police officer had unlawfully disclosed confidential police information.

The investigation included analysis of documents, execution of search warrants, investigations incorporating lawful telecommunications interceptions, physical and technical surveillance, and liaison and cooperation with the WAPOL Internal Affairs Unit.

A number of search warrants were granted under the provisions of section 101 of the CCC Act, and were executed by the Commission with the assistance of staff from WAPOL’s Internal Affairs Unit on 11 July 2006.

In addition, the Commission conducted both private and public hearings pursuant to Part 7 of the Act. Between 11 July 2006 and 31 August 2006, the Commission held a number of private hearings. In addition to its private hearings, the Commission also held public hearings on and between 22 and 25 August 2006.

Before deciding to hold public hearings the Commission, as required by subsection 140(2) of the CCC Act, weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements. The Commission considered that it was in the public interest to hold public hearings.

The purpose of the public hearings was to:

“... examine the relationships between a number of Western Australia police officers and Pasquale Minniti, with a view to determining how and if, any police officers had engaged in acts of misconduct arising from their relationship with Mr Minniti ...”.

1.2 Background

The misconduct by serving police officers identified during this investigation has highlighted the risk that public officers in positions of trust may develop inappropriate relationships with members of the public.

The community is entitled to expect that those given the responsibility of providing public services, and maintaining confidential information necessary for the provision of those services, will do so without fear or favour, and will act with integrity. Failure to do so can, at best, undermine public confidence in government; at worst, it can place members of the community at significant risk.

The Commission’s investigation revealed what are described in this report as “inappropriate relationships”. The Australian Concise Oxford Dictionary, Fourth Edition, defines the term “inappropriate” as, “*adj.* not appropriate”. It defines “appropriate” as,

adj. & v. ... adj ... 1 suitable or proper. 2 formal belonging or particular ... v.tr. ... 1 take possession of, esp. without authority. 2 devote (money etc.) to special purposes

Throughout this report the Commission employs the word “inappropriate” as the antonym of the first sense of “appropriate”, and as a synonym of “improper” or “unsuitable”.

Examples of “misconduct” detailed in this report include the improper release of confidential police information, the withdrawal of legally-issued infringements without authority, along with the provision of other inappropriate benefits to individuals. While this conduct relates to the actions of police officers and therefore directly affects WAPOL, many of the issues identified could equally apply to other service delivery agencies within the public sector. For example, “*misconduct*” involving the improper release of confidential information has public sector-wide ramifications. Almost all public sector agencies hold some form of confidential information. Much of this confidential information is highly personal and its public release could cause significant harm. Similarly, the unauthorised withdrawal of infringement notices is a risk for agencies that have power to issue fines as a way of enforcing regulations.

Of perhaps the most far-reaching significance, however, is the effect that inappropriate relationships between public officers and members of the community can have on the integrity of the public sector.

The “misconduct” by police officers identified in the course of this investigation arose as a direct result of inappropriate relationships that developed over a number of years between the officers and an individual who sought to cultivate those relationships. These inappropriate relationships led to police officers being compromised and, once compromised, it became increasingly difficult for them to avoid further “misconduct”. This has had serious consequences for the officers concerned, as well as for WAPOL, and the broader public sector in Western Australia.

The failure to adequately address “misconduct” can tie a department down in controversy for weeks, but more fundamentally it can destroy public confidence in government and undo reputations that have taken many years to build.

The results of this investigation provide a timely reminder, for all public officers throughout Western Australia, of the need to separate professional and private associations, and the importance of maintaining both their personal integrity and that of the agency for which they work.

1.3 Commission’s Role

Paragraph 7A(b) of the *Corruption and Crime Commission Act 2003* (“CCC Act”) describes one of the two primary purposes of the CCC Act and therefore the Commission it is:

to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector

The CCC Act, at section 7B, sets out how its purposes are to be achieved:

- (1) *... primarily by establishing a permanent commission to be called the Corruption and Crime Commission ... [and] ...*
- (3) *....The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct*

The Commission’s functions are set out at section 16 of the Act; they are:

the functions conferred or imposed by or under this Act or any other written law.

The Act then specifies the following functions:

- Section 17: Prevention and education function;
- Section 18: Misconduct function;
- Section 19: Functions in relation to Police Royal Commission;
- Section 20: Functions in relation to A-CC;
- Section 21: Organised crime functions, and
- Section 21A: Reviewable police action.

It is important to appreciate that the Commission is obliged to have regard to the totality of its functions when seeking to pursue the purposes of the CCC Act.

A primary function of the Commission is its “prevention and education function”, which directs attention to the terms of section 17:

17. Prevention and education function

- (1) *The Commission has a function (the “**prevention and education function**”) of helping to prevent misconduct.*
- (2) *Without limiting the ways the Commission may perform the prevention and education function, the Commission performs that function by -*
 - (a) *analysing the intelligence it gathers in support of its investigations into organised crime and misconduct; and*
 - (ab) *analysing the results of its investigations and the information it gathers in performing its functions; and*
 - (ac) *analysing systems used within public authorities to prevent misconduct; and*
 - (ad) *using information it gathers from any source in support of its prevention and education function; and*
 - (b) *providing information to, consulting with, and making recommendations to public authorities; and*
 - (c) *providing information relevant to its prevention and education function to the general community; and*
 - (ca) *ensuring that in performing all of its functions it has regard to its prevention and education function; and*
 - (cb) *generally increasing the capacity of public authorities to prevent misconduct by providing advice and training to those authorities, if asked, to other entities; and*
 - (d) *reporting on ways to prevent misconduct.*

The Commission is obliged by paragraph 17(2)(ca) to ensure that, “in performing all of its functions it has regard to its prevention and education function”. This includes the obligations at paragraph 17(2)(a) to analyse “the intelligence it gathers in support of its investigations into ... misconduct”, at paragraph 17(2)(cb) to generally increase “the capacity of public authorities to prevent misconduct by providing advice and training to those authorities, if asked, to other entities”, and at paragraph 17(2)(d) to report “on ways to prevent misconduct”.

These obligations, whilst separate from the “misconduct function” in the sense that they are legislated for at a different section of the CCC Act were never intended by the Parliament to be divorced one from the other. Here, the nature of the relationship between the “prevention and education function” and the “misconduct function” is specifically legislated for at paragraph 17(2)(ca) of the CCC Act.

It is in this context that one then turns to the powers of the Commission which are legislated for at Part 6 of the CCC Act, sections 94 – 136. The Parliament must have intended that the powers conferred on the Commission would permit the Commission to perform its functions under the CCC Act.

Thus, returning to the “misconduct function” it becomes clear that any “assessment” or “opinion” of “misconduct” under Part 3 of the CCC Act cannot be made without regard to the “prevention and education function”. Before considering the consequences of this requirement it is useful to consider how the “misconduct function” is performed. The heart of the “misconduct function” appears at section 22,

22. Assessments and opinions as to occurrence of misconduct

- (1) *Regardless of whether or not there has been an allegation of misconduct, the Commission may make assessments and form opinions as to whether misconduct:*
 - (a) *has or may have occurred;*
 - (b) *is or may be occurring;*
 - (c) *is or may be about to occur; or*
 - (d) *is likely to occur.*

- (2) *The Commission may make the assessments and form the opinions on the basis of:*
 - (a) *consultations, and investigations and other actions (either by itself or in cooperation with an independent agency or appropriate authority);*
 - (b) *investigations or other action of the Police Royal Commission;*
 - (c) *preliminary inquiry and further action by the A-CC;*
 - (d) *investigations or other action of an independent agency or appropriate authority; or*

(e) *information included in any received matter or otherwise given to the Commission.*

(3) *The Commission may advise an independent agency or appropriate authority of an assessment or opinion.*

Section 22 contemplates the Commission making “assessments” and forming “opinions” about conduct when no “misconduct” is actually occurring but “has”, “may be about to” or “is likely to” occur.

The power conferred on the Commission to make reports on specific matters appears at Part 5 of the CCC Act, see sections 84, 85, 88, 89 and 90. Thus section 22 of the CCC Act contemplates the prospect of a report by the Commission to Parliament, pursuant to section 84 of the CCC Act, which reports an “assessment” or “opinion” regarding conduct when no “misconduct” is actually occurring but “has”, “may be about to” or “is likely to” occur.

Before making such a report, the Commission is obliged to afford a person referred to in the report an opportunity to make representations pursuant to section 86 of the CCC Act, which provides:

86. Person subject to adverse report, entitlement of

Before reporting any matters adverse to a person or body in a report under section 84 or 85, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

Significantly, the notice to be given to a person or body under section 86 (“affected person or body”), is not confined to “assessments”, “opinions” and “recommendations” of, or as to, “misconduct”. The term used in that section is “matters adverse to a person or body”. That term must contemplate that the Commission may properly include in a report matters which are adverse to a person or a body yet do not amount to assessments or opinions of “misconduct”.

Reporting of different species of conduct that do not, on their own, amount to “misconduct” within the meaning of the CCC Act, is central to the Commission’s “prevention and education function”.

The Commission has the obligation, legislated for at paragraph 17(2)(ca) of the CCC Act, to have regard to the “prevention and education function” “when performing all of its functions”.

It is the Commission's view that the CCC Act confers the power to make an "assessment" or reach an "opinion" about conduct when no "misconduct" is actually occurring but "has", "may be about to" or "is likely to" occur. In addition, it requires the Commission, where appropriate, to express a cautionary view that certain conduct may potentially lead to misconduct. Thus, the Commission may discharge its obligation - under its "prevention and education function" - by expressing "opinions" or making comment regarding conduct that may encourage, foster or facilitate "misconduct". This therefore may involve the Commission, where appropriate, expressing "opinions" about or commenting upon the spectrum of conduct revealed by an investigation.

Such opinions or observations can then be reported to Parliament under the CCC Act. These reports enable the Commission to publicly identify circumstances that foster "misconduct" in the Western Australian public sector. It is by such reporting that the Commission performs one aspect of its statutory obligation, "to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector" as required by paragraph 7A(b) of the CCC Act.

In deciding whether to report such "assessments" and "opinions" or make such comment, the Commission must be guided by the purposes and objects of the Act and the Commission's statutory functions and powers.

When an inquisitorial commission, such as the Commission, assesses the spectrum of conduct revealed by an investigation it is not always easy to draw stark lines between different categories of conduct that may be described as, any of, "inapt", "injudicious", "unwise", "unsuitable", "inappropriate" or "improper". Ultimately the Commission will make an "assessment" or express an "opinion" with regard to such conduct where that is necessary to perform one of its functions.

To acknowledge that an opinion or comment that conduct is "inappropriate", "unreasonable", "improper", "dishonest" or is to be characterised in some other adverse way, is subjective, does not mean that such characterisation is dependent on an idiosyncratic view unfounded on any identifiable standard.

The formation of a subjective opinion based on the application of community or other standards is not unusual in the law. Courts, tribunals and administrative bodies are commonly required to form such opinions. Firearms legislation may require an applicant for a licence to satisfy the relevant authority that he or she is "of good character". Legislation may require an assessment whether certain conduct is "dishonest" or "improper". In these and other examples, the legislation may contain no definition of the relevant adjective, leaving it to the court, tribunal or administrative body to discern the relevant standard and apply it to the conduct or circumstances shown.

For a Minister of State or a Member of Parliament, conduct that is "inappropriate" would fall to be gauged against the principles, standards and values articulated in the literature as underpinning the operation of accountability systems in the

Western Australian public sector as they apply to such persons as being “suitable or fitting”.

Likewise, the conduct of an officer of the public sector would be assessed against the relevant Code of Ethics, Code of Conduct, Premier’s or departmental directives or guidelines, and so on. In other circumstances, it may be a matter of articulating current community beliefs, values and expectations of what is appropriate conduct for a public officer in the particular person’s situation.

The important point is the articulation of an objective standard against which the conduct in question can be assessed.

The Commission considers that adverse comment falling short of “misconduct” may properly be made, where justified, whether in respect of a public officer or some other person, if relevant or related to an allegation of “misconduct” by a public officer. Where those circumstances exist, reasons for the adverse opinion will ordinarily be given, supported by a summary of the relevant facts as well as the reason(s) for expressing the opinion.

1.4 Jurisdiction

The Commission has jurisdiction to deal with allegations of “misconduct” concerning public officers. The term “public officer” is defined in section 3 of the CCC Act by reference to the definition of that term in the *Criminal Code 1913* (Criminal Code). Section 1 of the Criminal Code defines “public officer” to include “a police officer”. It follows that in this case the Commission had jurisdiction to investigate the alleged improper associations and inappropriate relationships between Mr Minniti and WAPOL officers.

CHAPTER TWO – THE INVESTIGATION

2.1 Background

Mr Pasquale Minniti, is the proprietor of an established panel beating business and used car yard located in Perth. From all appearances Mr Minniti is a successful businessman.

Mr Minniti has had a long-held ambition to become a police officer, and has a passion for all matters relating to policing. Mr Minniti has sought to befriend as many police officers as possible. A business card holder lawfully seized from his business premises contained in excess of one hundred police contacts.

The process of bonding and affiliating himself with police officers has been a lengthy, deliberate and calculated process for Mr Minniti. He has developed a network of police friends, which he has actively cultivated.

In the public examination held by the Commission, Mr Minniti explained that some years ago he had light-heartedly, and perhaps affectionately, been given the nickname 'Inspector Minniti' by a former Western Australia Police officer.² This was in response to the obvious interest and passion Mr Minniti displayed in policing activities.

Although this nickname may have been given to Mr Minniti at the time in jest, he adopted it as his own, promoted it, and often referred to himself as 'Inspector Minniti' when he was acting as a conduit between his associates and police officers. Over time, some police officers, as well as people outside the police service, had come to identify him as 'Inspector Minniti'.

Consequently, Mr Minniti developed and adopted a persona as 'Inspector Minniti', whereby his friends and associates viewed him as a person who could assist them with police related issues, a perception that has proven accurate on a number of occasions. This charade, and the support given to it, is the core issue identified during this investigation.

² Mr Pasquale Minniti, Transcript of Hearing, 22 August 2006, pp 144-145.

2.2 The Investigation

The Commission's investigation revealed that Mr Minniti provided "favours" to police officers under the pretext of friendship. The services provided as "favours" included:

- the offer and acceptance of discounted panel work;
- selling cars for police officers through his car yard, resulting in savings in financial costs and time, and providing a convenient sales outlet;
- the offer and acceptance of free or discounted automotive work through Mr Minniti's network of associates;
- the purchase of vehicle parts at trade price (saving on cost);
- the supply and use of free loan cars;
- the payment of meals for police officers at expensive restaurants; and
- the supply of goods, such as bottles of whisky, often provided by a third party who was assisted by the information provided.

In providing these "favours" to police officers, Mr Minniti ingratiated himself with them, befriended them, and rendered them vulnerable to manipulation. He also gained influence by portraying himself as a valued associate of police, which reinforced the "Inspector Minniti" persona.

In return for the "favours" he provided to police officers and his "friendship", the Commission identified a large number of instances where Mr Minniti had received, and benefited from, extraordinary unauthorised and illicit treatment and services from police officers. Many of these benefits reinforced the "Inspector Minniti" charade, and included very serious breaches of police procedure.

The investigation has gathered substantial evidence of the access and release of protected WAPOL information to Mr Minniti, who often requested the information under a pretext, while not revealing his real reasons for wanting the information. On one occasion, Mr Minniti sought and obtained information at the request of a prisoner facing serious charges, unbeknown to the police officer who provided the information. This emphasises the need to strictly control access to such confidential information.

Substantial information has been collected during the investigation concerning the unauthorised withdrawal of traffic infringements for Mr Minniti, his family, friends, and associates. Mr Minniti had so much success in achieving the unauthorised withdrawal of traffic infringements that he was heard to refer to his business as the "Perth Traffic Office". Mr Minniti's activities involved a police officer, Senior Constable Silvestri, who worked at Infringement Management and Operations.

Other inappropriate treatment and services provided to Mr Minniti by police officers included:

- police officers taking him on patrol in police vehicles without appropriate approvals;
- providing Mr Minniti with “lifts” in police vehicles, on occasions at his ‘request’, and at short notice;
- running “errands” for Mr Minniti and his associates. One example involved using a vehicle and officers from Wembley to go to Fremantle to collect a school bag, and then delivering it to the northern suburbs for one of Mr Minniti’s associates. A further example involved a former police officer, Sergeant Harrison, from the Bayswater Police Station, being asked by Mr Minniti to come to his business, take an accident report from a customer, and then conduct investigations into the other party with the aim of that party admitting liability for the accident, thereby preventing the customer from losing the customer’s no-claim bonus;
- the use of police officers to target and potentially harass other individuals. On one occasion, Sergeant Harrison conducted unauthorised checks on one of Mr Minniti’s relatives with whom Mr Minniti had been in conflict, and agreed to speak to other police about actively targeting that person;
- extraordinary assistance from police officers regarding the preparation of correspondence, applications, and other paperwork for Mr Minniti. Examples include the preparation of correspondence to WAPOL seeking the withdrawal of traffic infringements by police officers, and preparing correspondence for Mr Minniti concerning his application to the Police Commissioner and Minister regarding his part-time policing proposal;
- providing information to Mr Minniti on police practices, policies, and procedures, including information about the location and timings of random breath testing units; and
- providing Mr Minniti with police accoutrements and equipment including police issue hats and badges.

Mr Minniti used his ability to obtain police assistance to promote his personal and business interests to others. He offered to use his influence in exchange for goods and services from others; for example, he sought to obtain discounted meat, dental work, and discounted guitar lessons. In another instance he coerced a third party to damage an unidentified vehicle, in return for assistance in achieving withdrawal of traffic infringements.

The investigation revealed that increased demand was placed on police officers when they were most vulnerable. Sergeant Harrison at one stage was receiving help from Mr Minniti in repairing a vehicle he had purchased for a low price, and during this period demands placed on him by Mr Minniti increased dramatically.

In another case, a police officer who was renting a house from Mr Minniti was negotiating a rent review, and during this period he succumbed to a request from Mr Minniti to provide him with protected WAPOL information. At the time this was occurring, the police officer could not afford to buy a house, could not afford a rent increase, and was not in a position to move address. This was the only occasion the Commission identified misconduct by this officer.

2.3 Commission's Opinions

An opinion formed by the Commission under the CCC Act that "misconduct" has occurred is a serious matter. It may affect individuals personally, professionally or in their employment. It has the capacity to affect relations between those regarding whom the Commission has formed such an opinion and their families and friends. Accordingly, there is a need to exercise care in forming "opinions" as to the occurrence of misconduct.

Equally, when this Commission reports an opinion under the CCC Act that an inappropriate relationship or inappropriate conduct "may be about to" or "is likely to" lead to "misconduct", there is a need to exercise care and to identify the basis for such an opinion and the need to report it.

An opinion that "misconduct" "has occurred" is not, and is not to be taken as, a finding or opinion that a particular person has committed a criminal offence or a disciplinary offence.

After assessing the evidence before it, the Commission is of the opinion that:

- The relationships between Mr Minniti and police officers may have had innocent beginnings, but they slowly developed to a point where the police officers felt "obligated" to Mr Minniti to provide him with assistance above and beyond that which might be provided in normal circumstances to other members of the public;
- Mr Minniti built these relationships for his own benefit, and at times acted as a predator, targeting vulnerable officers once they were indebted to him. He encouraged the police officers to engage in seemingly minor and innocuous yet inappropriate activity, as the first step in a process at the end of which the police officer was fully compromised;
- The successful completion of a task, for example the obtaining of a piece of information from the police, encouraged others to approach Mr Minniti for assistance, and encouraged him to continue to seek out and develop relationships with police officers, thus increasing his influence and status; and
- Some police officers were unable to separate their personal relationships with Mr Minniti from the performance of their professional functions.

The investigation brought to light a number of allegations of WAPOL officers acting improperly in handling traffic infringement notices. This alleged activity ranged from fabricating material to be included in statutory declarations, and the unauthorised disclosure of information, to the improper and unauthorised withdrawal of infringements.

In the Commission's opinion two police officers engaged in misconduct:

1. **Senior Constable Arduino Silvestri:** it is the Commission's opinion that this police officer has, by assisting Mr Minniti at least in the following ways in his capacity as a public officer, engaged in "serious misconduct", as defined in the CCC Act. This assistance included: -
 - his role in the withdrawal of traffic infringements;
 - his role in the production of statutory declarations;
 - providing confidential information, and
 - misusing restricted access computers.

2. **Sergeant Bill Harrison:** it is the Commission's opinion that this police officer has, by assisting Mr Minniti at least in the following ways in his capacity as a public officer, engaged in "serious misconduct", as defined in the CCC Act. This assistance included: -
 - his role in the production of statutory declarations
 - providing confidential information, and
 - misusing restricted access computers.

Events subsequent to the Commission's inquiry:

- **Senior Constable Arduino Silvestri:** has been charged with five counts of corruption and has indicated a plea of not guilty, and six counts of unlawful use of a computer. A plea to the later charges is yet to be entered, and

- **Sergeant Bill Harrison:** has resigned from the WAPOL, and was charged with two counts of witnessing a false statutory declaration to which he pleaded guilty and for which offences he received a 12 month suspended term of imprisonment and a \$6,000 fine. Mr Harrison was also charged with 12 counts of unlawfully using a restricted access computer to which he pleaded guilty and for which offences he received 10 month suspended term of imprisonment and a further \$5,000 fine.

2.4 Possible Criminal Offences by Others

The Commission has taken advice from the Office of the Director of Public Prosecutions regarding its reporting in respect of possible criminal offences. The following report is consistent with the advice received.³

Subsequent to the Commission's investigation, a number of persons (not being public officers) were charged with criminal offences. These include:

- **Pasquale Minniti**: has been charged with five counts of corruption, one of making a false declaration, one of making a false statutory declaration and one of attempting to induce a witness to give false testimony before the Commission. At the time of writing this report, he has pleaded not guilty to these charges. He was also charged with eight counts of unlawful use of a computer.
- **Non-public officer**⁴: was charged with making a false statutory declaration. This matter is yet to be finalised.
- **Francesco Di Angelo**: was charged with four counts of signing a false statutory declaration. These matters have yet to be finalised.
- **Giuseppe Barbaro**: was charged with three counts of signing a false statutory declaration. These matters have yet to be finalised.
- **C4** (witness codename): was charged with two counts of signing a false statutory declaration. He pleaded guilty and was fined a total of \$9,000.⁵
- **C1** (witness codename): was charged with one count of signing a false statutory declaration. He pleaded guilty and was fined \$4,000.

In the Commission's view, it is essential for public confidence in the integrity of WAPOL and its processes that other cases of "misconduct" of this type are identified and that appropriate action is taken.

³ Refer to DPP correspondence on 8 November 2007

⁴ Name withheld due to impending trial.

⁵ Codenames for certain witnesses have been provided to protect the identities of individuals who have cooperated with the Commission. The pseudonyms used in this report are those ordered by the Commissioner during the public hearings in this investigation.

2.5 Section 86 Representations

Mr Minniti has made representations to the Commission pursuant to section 86 of the CCC Act. The Commission has carefully considered those representations and made several amendments to its treatment of matters relating to Mr Minniti set out above. Mr Minniti's primary representation was that tabling of this report should be deferred until after the determination of the criminal charges against him. The Commission sought the advice of the Office of the Director of Public Prosecutions as to whether tabling this report would create any prejudice to Mr Minniti. Based on the advice received by the Commission from the Office of the Director of Public Prosecutions, this representation by Mr Minniti was rejected.

Senior Constable Arduino Silvestri also made representations regarding the probity of tabling the Commission's report when he is also charged with criminal offences. As with the representations made by Mr Minniti, this was the subject of advice received from the Office of the Director of Public Prosecutions in similar terms. The balance of the representations made by Constable Silvestri have been carefully considered by the Commission.

2.6 Public Confidence in WAPOL's Traffic Office

The evidence available to the Commission gives rise to sufficient concerns as to question the confidence the public should have in the operations of WAPOL's Traffic Office.

Recommendation 1

The Commission recommends that WAPOL undertake a comprehensive audit of the Traffic Office to determine whether misconduct by others, similar to that identified through this investigation, has occurred.

CHAPTER THREE – ASSOCIATED MATTERS

3.1 John D’Orazio MLA Summoned to a Public Hearing

During the course of its investigation the Commission became aware of contact between Mr Minniti and Mr D’Orazio. This contact was initiated by Mr Minniti, who was known to Mr D’Orazio, and related to Mr D’Orazio’s concerns regarding allegations that he drove a motor vehicle when his licence had been suspended due to the alleged non-payment of fines.

The initial contact by Mr Minniti was made at a time when Mr D’Orazio was receiving considerable adverse media publicity about these allegations. Due to public scrutiny and media exposure as a consequence of the appearance of Mr D’Orazio in public hearings, the Commission is of the opinion that specific reference should be made in this report to Mr D’Orazio’s dealings with Mr Minniti.

The Commission is acutely aware of the potential in public hearings to unfairly damage the reputation of individuals. Public hearings are only held when, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it is considered that it is in the public interest to conduct such hearings.

After careful consideration, the Commission summonsed Mr D’Orazio to appear in public hearings for four reasons.

First, at the time of the public hearing the Commission was examining an allegation that Senior Constable Silvestri was involved in improperly withdrawing traffic infringement notices. The best evidence available to the Commission at that point in time was a lawfully intercepted telephone conversation at 7:26 pm on 8 May 2006 between Mr Minniti and Senior Constable Silvestri, during which they talked about Mr D’Orazio’s concerns regarding alleged traffic infringements.⁶ This conversation confirmed an earlier indication of Mr D’Orazio’s concerns regarding alleged traffic infringements in the context of its inquiry regarding Mr Minniti. It drew Mr D’Orazio into the Commission’s inquiry. It was during this conversation that both men, and Senior Constable Silvestri in particular, let their guard down. In previous conversations both had been very guarded. – but not this time. During this call, when Mr Minniti said, “We need to fix things up for John D’Orazio”, Senior Constable Silvestri made the following revealing replies: “He’s unfixable”, “I wouldn’t be touching him with a barge pole” and “Mate, I like my job for the moment” (“Silvestri Conversation”).

⁶ Senior Constable Silvestri, Transcript of Hearings, 24 August 2006, p 60.

These intercepted conversations were central and primary to the Commission's investigation of Mr Minniti, and were not simply an additional matter as represented by counsel for Mr D'Orazio.

The reason why Mr D'Orazio was questioned at the Commission in August 2006 was because of the fact that during its investigation, the Commission had intercepted several telephone discussions between Mr D'Orazio and Mr Minniti in which the latter offered to use 'contacts' which he claimed to have with DPI, to assist in locating a notification of change of address which Mr D'Orazio stated he had faxed to DPI, and because of a telephone intercepted call between Minniti and a police officer (Senior Constable Silvestri)⁷

The exchanges between Mr Minniti and Senior Constable Silvestri, in the Commission's opinion, strongly suggest that both Mr Minniti and Senior Constable Silvestri knew that the assistance Mr Minniti was asking Senior Constable Silvestri to provide in respect of Mr D'Orazio was improper, unauthorised and would not withstand scrutiny. It is correct to suggest,

There was no evidence to suggest that Silvestri had any involvement in dealing with D'Orazio's matter and in particular he refused to provide any assistance when Minniti spoke to him⁸

Senior Constable Silvestri's refusal to get involved indicates his awareness that what Mr Minniti was seeking would not have withstood scrutiny. It was an important part of the material that the Commission wanted to put to Senior Constable Silvestri and Mr Minniti. It was central to this inquiry. It also indicated that Senior Constable Silvestri understood that, were he to assist Mr Minniti he would be aiding Mr D'Orazio, who whilst he had been removed from the Police and Justice portfolios earlier that day, 8 May 2006, remained a Minister until the following day, and thereafter continued to serve as a Member of the Legislative Assembly. Once the Commission decided that the Silvestri Conversation was to be led in public examinations it became necessary to examine Mr D'Orazio in public so that a partial account of the facts was not presented.

Second, although the Commission had the evidence of what Mr Minniti had told Mr D'Orazio over the phone, it did not know what Mr Minniti had said during a private meeting with Mr D'Orazio at Mr Minniti's workshop on Wednesday 10 May 2006. The Commission therefore needed to obtain Mr D'Orazio's account of that meeting.

⁷ Facsimile from Mr David P A Moen, counsel for Mr D'Orazio to the Commission received at 18:10 on 19 November 2007 (referred to in this report as the "Ultimate Representations") at p 1, para 2.

⁸ Ultimate Representations, p. 2, para 1.

Counsel for Mr D’Orazio represented to this Commission that,

If (sic) this is not an inquiry into Mr D’Orazio as a Member for Parliament or a Minister, and therefore falls outside the scope of the Act⁹

Throughout the period of the Commission’s inquiry Mr D’Orazio was a “public officer” within the meaning of the CCC Act, whether as a Minister of State or Member of Parliament, and a person whose conduct clearly falls within this Commission’s “misconduct” function. To the extent that this representation suggests that this Commission cannot investigate either (1) the conduct of a public officer whose potential involvement emerges during the course of an investigation, or (2) a public officer who is not expressly named in the scope and purpose of an investigation, it is rejected.

3.2 The June 2007 Proposed Report

Following completion of its investigation the Commission prepared a proposed report in June 2007 with the intention of reporting the results of its investigation to the Parliament pursuant to section 84 of the CCC Act on 8 June 2007 (“proposed report”).

Prior to putting the proposed report into a form suitable for tabling in the Parliament, the Commission having prepared a draft of the proposed report (“draft proposed report”) sought, where relevant, in compliance with section 86 of the CCC Act to afford persons or bodies named in the draft proposed report a “reasonable opportunity” to make “representations to the Commission” concerning any “matters adverse” to such person or body.

The Commission sought to afford such opportunities by writing to relevant persons advising them of “matters adverse” and, in some cases enclosing a portion(s) of the draft proposed report relating to such persons and inviting representations on their behalf. One such letter dated 2 April 2007 was written to Mr D’Orazio and couriered to him at his office at Parliament House. Receipt of the envelope containing this letter was endorsed by Parliamentary staff.

In early June 2007 the Commission put the proposed draft report into a form suitable for tabling and made arrangements to table the report in Parliament on 8 June 2007.

⁹ Ultimate Representations, p 2, para 5.

On 7 June 2007, the Commission telephoned Mr D’Orazio as a courtesy to inform him that its report would be tabled in Parliament the following morning. During the conversation, Mr D’Orazio told the Commission that he had not been given the opportunity to comment on the matters and opinions that the commission intended to publish, which, if accurate, would mean that section 86 requirements of the CCC Act in regard to any proposed adverse mention concerning Mr D’Orazio would not have been met.

At this time, the Commission believed that it had met these requirements due to the confirmation it received that the section 86 letter addressed to Mr D’Orazio had been accepted by Parliamentary staff on his behalf, and that two months had passed in which Mr D’Orazio had had the opportunity to make any submissions.

Subsequent to this initial telephone call, a short time later, the Commission sent a facsimile of the relevant sections to the report to Mr D’Orazio, upon the receipt of which he said that they contained factual errors.

It was at this stage that the Commission made the decision that the proposed report not be tabled in the Parliament on 8 June 2007, and that Mr D’Orazio be provided with a “reasonable opportunity” to make “representations to the Commission” concerning any “matters adverse” to him in the proposed report pursuant to section 86 of the CCC Act.

Embargoed copies of the proposed report were provided to the offices of the Premier and Leader of the Opposition on 7 June 2007 (“embargoed Parliamentary copies”). Turning again to the Australian Concise Oxford Dictionary, Fourth Edition, the Commission uses the term “embargoed” in the ordinary sense, that is, “placed under an embargo”, and “embargo” is, “an official ban on any activity”.

Put shortly, the embargoed Parliamentary copies were provided on the basis that there was an official ban on the use of the report as a public document before the report was tabled in Parliament. As the Parliamentary Inspector of the Corruption & Crime Commission found as a result of his inquiry (discussed below at Sections 1.5 and 1.6) both Mr Kime, Chief of Staff of the office of the Leader of the Opposition, and Mr Robert Taylor, senior journalist with The West Australian,

*knew that the ...[proposed report] ... was embargoed until it was tabled ... the following morning in Parliament. Both knew that that meant it was intended that the contents of the Report were not to be disclosed until tabled in Parliament.*¹⁰

¹⁰ Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Investigation and Review of the Acts and Proceedings of the Corruption and Crime Commission Concerning Mr D'Orazio*, Report No. 28, 18 July 2007, p. 11.

Previously, on 6 June 2007, in accordance with its then practice, the Commission had also provided an embargoed copy of the proposed report to Ms Marie Mills, a public relations consultant of Mills Wilson Media Consultants, for the purpose of enabling her to brief Commission staff on how to respond to media questions (“embargoed media copy”).

The embargoed Parliamentary copies and the embargoed media copy (“embargoed copies”) were the only copies of the proposed report not in the possession of the Commission ahead of the proposed tabling in Parliament on 8 June 2007.

The West Australian newspaper in its Friday edition on 8 June 2007 at pages 1 and 8 published an article by a Mr Robert Taylor titled “CCC Dashes D’Orazio Revival”. This article suggested, in the excerpts set out below, that the author had direct or indirect access to the proposed report prior to its proposed tabling in Parliament and at a time when every copy of the report other than the embargoed copies were in the possession of the Commission (emphasis added).

The West Australian understands that while the CCC finds no evidence that Mr D’Orazio acted corruptly or engaged in misconduct that could lead to disciplinary proceedings under the Public Sector Management Act, it is believed to be critical of what it sees as indirect support for Mr Minniti to use his contacts to gain special access to material within the Department of Planning and Infrastructure ... “,

and,

in its report, due to be tabled in State Parliament today, the CCC is believed to find (sic) that Mr D’Orazio gave indirect support for Mr Minniti’s use of contacts within the DPI to locate material that might help clear his name over the traffic infringements

It is useful to clarify the Commission’s role at this point and note that the Commission does not make “findings” regarding “misconduct” but makes “assessments” and forms “opinions” regarding the material gathered in its investigation. It is these “assessments” and “opinions” that the Commission expresses in its reports, including its reports to Parliament under section 84 of the CCC Act. The learned author in Hall, P., *Investigating Corruption And Misconduct In Public Office* makes the following observation:

In performing its functions the CCC is not expressly required to make ‘findings’ based upon admissible evidence. Section 22(1) speaks in terms of the Commission ‘making assessments and (forming) opinions’ as to misconduct (see also s 32(1) and s 33(1) which refer to the making of an assessment of an (or the) allegation)¹¹

¹¹ Hall, P, 2004 *Investigating Corruption and Misconduct In Public Office*, p.344, Lawbook Company.

The giving of reasons for an opinion that certain conduct does not amount to “misconduct” may well involve explaining that although the conduct is “undesirable”, “inappropriate”, “unwise”, “imprudent”, or “dangerous”, it does not fall within the definition of “misconduct” in Section 4 of the CCC Act. The giving of reasons may well involve an explanation as to why that is so.

Furthermore, the Commission’s obligation to prevent future “misconduct” may necessitate expressing a critical view about conduct that does not amount to “misconduct” itself because, if such conduct continued unchecked, or if repeated in other circumstances, it may be likely to constitute, or lead to, “misconduct”. Such criticism would be within the Commission’s reporting function, whether or not it is the basis of a recommendation. No doubt other illustrations may demonstrate that criticism of conduct as “inappropriate” (or any other adverse descriptor less than “misconduct”) may properly be made by the Commission.

3.3 The Parliamentary Inspector’s Investigation

Following publication of The West Australian’s story “two separate but related complaints” were made to the Parliamentary Inspector of the Commission (“Parliamentary Inspector”). These are described by the Parliamentary Inspector in the following terms:

one from Hammond Worthington, Lawyers for Mr D’Orazio MLA, the other from Mr John Quigley MLA, concerning some aspects of a draft report by the Commission of an investigation called ‘Operation Caroline’¹²

As a result the Parliamentary Inspector notified the Commission on 15 June 2007 that,

the following matters are removed to the Parliamentary Inspector for consideration and determination:

1. *Whether as required by section 86 of the Act, the ... Commission gave Mr John D’Orazio MLA a reasonable opportunity to make representations to the Commission before reporting matters adverse to Mr D’Orazio in a report made by the Commission under section 84 of the Act, and in*

¹² Parliamentary Inspector of the Corruption and Crime Commission, *Report made pursuant to section 199 of the Corruption and Crime Commission Act (“the Act”) on the Parliamentary Inspector’s investigation and review of the acts and proceedings of the Corruption and Crime Commission (“the Commission”) concerning Mr John D’Orazio MLA (“Parliamentary Inspector’s Report”)* at Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector’s Investigation and Review of the Acts and Proceedings of the Corruption and Crime Commission Concerning Mr D’Orazio*, Report No. 28, 18 July 2007, para 1.

particular (without limiting that inquiry) whether Mr D’Orazio or some other person on his behalf received from the Commission a letter dated 2 April 2007 ... inviting him to make representations by close of business Friday 13 April 2007, and if not, the circumstances of the non-receipt of that letter.

2. *Determination of the circumstances and persons involved (including but not limited to public officers) in the provision of the said report, or extract from it, to members of the media, including but not limited to Mr Robert Taylor and Mr Gary Adshead.*

3. *A complaint made by Mr John Quigley MLA that the release by the Commission to the Premier and the Leader of the Opposition of embargoed copies of a Commission report in the matter of Mr Pasquale Minniti and others, prior to the tabling of the Report before Parliament, constituted a breach of Section 152 of the Act; and, further whether the publication of an extract from that Report was also a breach of section 152 ...”¹³*

The Parliamentary Inspector by a report dated 17 July 2007 made a report to Parliament regarding his Inquiry which was tabled by the Joint Standing Committee on the Corruption & Crime Commission on 18 July 2007.¹⁴

3.4 Leak Of The Proposed Report

The PI Report at paragraphs 32 and 33 observed:

“32. However, I am satisfied that although the Commission did send an ‘embargoed copy’ of the Report ... [a reference to what is referred to in the Commission’s report as the ‘proposed report’] ... to the office of the Premier, and to the office of the Leader of the Opposition on 7 June 2007, before Mr D’Orazio had an opportunity to see it or make representations, the only ‘leak’ (the disclosure of its contents to the West Australian) was by Mr Kime ... [Chief of Staff at the office of the Leader of the Opposition] ... who gave a copy of that part of the Report relating to Mr D’Orazio to Mr Robert Taylor, a senior journalist with the West Australian. Both Mr Kime

¹³ Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector’s Investigation and Review of the Acts and Proceedings of the Corruption and Crime Commission Concerning Mr D’Orazio*, Report No. 28, 18 July 2007, p. 1.

¹⁴ Parliamentary Inspector’s Report.

and Mr Taylor knew that the Report was ‘embargoed’ until it was tabled (as then expected) the following morning in Parliament. Both knew that the contents of the report were not to be disclosed until tabled in Parliament ...

33. *There was no ‘leak’ of the contents of the Report to The West Australian by the Commission or any of its officers, as alleged by Mr D’Orazio. I understand that he now accepts that, although he initially assumed that the Commission was at fault.*

3.5 Parliamentary Statement

Mr D’Orazio read a portion of the proposed report to the House in the Legislative Assembly on 12 June 2007.¹⁵

3.6 Section 86 Representations By Mr D’Orazio

The purpose of affording affected persons a “reasonable opportunity” under section 86 of the CCC Act to make “representations to the Commission” concerning any “matters adverse” is both to allow the person affected to make representations regarding such matters and to correct any factual errors in the Commission’s proposed report.

Whilst the Commission takes considerable care to avoid any factual errors in its reports, no report can be made to Parliament without affording a person or body adversely mentioned by such a report a reasonable opportunity to identify any errors they consider appear in the report and make representations to the Commission in relation thereto.

The Commission sought to afford Mr D’Orazio an opportunity to make such representations to it by couriering its letter dated 2 April 2007 to him at his office at Parliament House identifying the “matters adverse” in the “draft proposed report”. The circumstances that explain why this attempt was unsuccessful have been the subject of the PI Report and need not be repeated here.

The proposition, put on behalf of Mr D’Orazio, that his conduct fell outside the terms of the commission’s inquiry ignores how that conduct came to the notice of the Commission and this Commission’s jurisdiction.

¹⁵ WA Legislative Assembly, 12 June 2007. pp. 2789b-2791a/1 (John D’Orazio)

Mr D'Orazio has now made substantial written representations to the Commission through his legal representatives:

- (1) Representations following the Commission's decision not to table its proposed report on 8 June 2007:-
 - (a) Mr D'Orazio's solicitors facsimile to the Commission dated 8 June 2007 seeking an opportunity to make representations regarding the draft proposed report;
 - (b) The Commission's letter to Mr D'Orazio's solicitors dated 11 June 2007, providing Mr D'Orazio with portions of its draft proposed report containing "matters adverse" to Mr D'Orazio and inviting representations under section 86 of the CCC Act; and
 - (c) Letter from counsel for Mr D'Orazio dated 26 June 2007 received by this Commission on 28 June 2007 being 12 pages of representations, ("Initial Representations");

- (2) An unsolicited letter dated 26 September 2007 sent in anticipation of this Commission preparing a draft of its further report ("Unsolicited Representations"); and

- (3) Following the provision by this Commission to Mr D'Orazio of relevant portions of its further draft report ("further draft report") enclosed in its letter of 12 October 2007 inviting representations under section 86 of the CCC Act ("the Invitation"), this process has included:-
 - (a) A facsimile from Mr D'Orazio's counsel of 16 October 2007 seeking an extension of time to the week commencing 5 November 2007 within which to respond to the Invitation;
 - (b) A further facsimile from Mr D'Orazio's counsel on 16 October 2007 which made a series of requests for information;
 - (c) A letter from this Commission to Mr D'Orazio's counsel dated 18 October 2007, extending time within which representations would be received to Mr D'Orazio's counsel's request to 5 November 2007 the date requested by Mr D'Orazio's counsel ("the Extension");
 - (d) A letter from Mr D'Orazio's solicitors dated 25 October 2007 seeking a further extension of the time within which representations would be received until 19 November 2007;
 - (e) A letter from the Commission to Mr D'Orazio's solicitors dated 26 October 2007 extending the time within which representations would be received to 13 November 2007 and seeking further submissions if more time was required ("Further Extension");

- (f) A facsimile from Mr D’Orazio’s solicitors dated 8 November 2007 which made a series of requests for information by 9 November 2007;
- (g) The Commission’s facsimile to Mr D’Orazio’s solicitors dated 9 November 2007 confirming receipt of their facsimile dated 8 November 2007;
- (h) The Commission’s letter dated 12 November 2007 providing its substantive response to Mr D’Orazio’s solicitors facsimile of 8 November 2007;
- (i) Three facsimiles from Mr D’Orazio’s counsel to the Commission received by the Commission on 13 November 2007, of which the first was dated 14 November 2007 and the latter two were dated 13 November 2007;
- (j) The Commission’s letter to Mr D’Orazio’s counsel dated 14 November 2007 recording that the deadline for representations by Mr D’Orazio had passed;
- (k) A facsimile from Mr D’Orazio’s counsel to the Commission received on 14 November 2007 dated 14 November 2007,
- (l) Following a speech by Mr D’Orazio in the Legislative Assembly regarding correspondence with this Commission in respect of the further draft report, the Commission wrote to Mr D’Orazio’s counsel by letter dated 15 November 2007 setting out the history and effect of the section 86 process;
- (m) By letter dated 15 November 2007 this Commission informed the Parliamentary Inspector that it was prepared to extend the deadline for section 86 representations by Mr D’Orazio until 19 November 2007 (“Ultimate Extension”),
- (o) By letter dated 16 November 2007 Mr D’Orazio wrote to the Commission regarding the Ultimate Extension and the Commission’s letter dated 15 November 2007;
- (p) On 19 November 2007 the Commission wrote to Mr D’Orazio indicating that it would treat his letter of 16 November as a representation made pursuant to section 86 of the CCC Act, and
- (q) On 19 November 2007 at 18:10 the Commission received a 21 page facsimile setting out representations made by Mr D’Orazio’s counsel pursuant to section 86 of the CCC Act (“Ultimate Representations”).

This report refers to the communications at paragraphs (1), (2) and (3) collectively as the D’Orazio submissions. The D’Orazio Representations have been carefully considered by the Commission in the preparation of this report. In particular, the Commission has examined those matters personally raised by Mr D’Orazio in his letter referred to at paragraph (3)(o) above.

Despite the extensive attempts made by this Commission to afford Mr D’Orazio every opportunity to make representations regarding any “matters adverse” in this report, his counsel made the following representation on his behalf (emphasis added):

The Commission has failed to afford Mr D’Orazio natural justice by failing to put specific allegations to Mr D’Orazio and evidence which the Commission now seeks to rely in making findings that the ‘unequivocal’ refusal of assistance amounts to inappropriate conduct¹⁶

The “matters adverse” to Mr D’Orazio contained within this report are well known to him and his advisers. The Commission has made no “findings” but has proffered its opinion, as it is obliged to under the CCC Act. Mr D’Orazio did not make an “unequivocal refusal of assistance” from Mr Minniti and that is neither a finding nor an opinion of this Commission.

3.6.1 Commission’s View – General Representations

It is useful to now set out the Commission’s view in respect of some of the general matters raised on behalf of Mr D’Orazio in the D’Orazio Representations that go the Commission’s jurisdiction and powers:

- (a) There is no requirement or obligation on a person or body to whom the Commission affords an opportunity under section 86 of the CCC Act to accept the opportunity to make representations in respect of a proposed report. Whether they choose to do so or not is entirely a matter for the person or body affected. Of course, if such a person or body declines to make representations to the Commission any report to Parliament is then made without their input in respect of the factual accuracy of the proposed report and the merits of the Commission’s “assessments” and “opinions”;
- (b) For the purposes of section 86 of the CCC Act, it is not the Commission’s practice to advise a person or body affected of anything other than the “*matters adverse*” to the person or body affected contained in a proposed report. In making a judgement regarding the extent of the notice to be provided for this purpose, including any adverse opinions, reasoning and supporting factual material the Commission seeks to err on the side of caution by providing more rather than less. The Commission does not, however, accept that an affected person or body has any entitlement to sight portions of a proposed report unrelated to them and which may reveal “*matters adverse*” to other persons or bodies before the proposed

¹⁶ Ultimate Representations p 5, para 4.

report has been tabled in both Houses of Parliament. The latter would, arguably, be a breach of the CCC Act;

- (c) An affected person or body, when choosing to make representations to the Commission in respect of a proposed report pursuant to an opportunity afforded under section 86 of the CCC Act, does so in confidence – in the sense that notice of the matters adverse in the Commission’s proposed report is provided to the affected person or body solely for the purpose of making such representations to the Commission, and remains confidential to the Commission and the person or body affected (this Commission cannot comment on the use of Parliamentary Privilege by a person affected who is also a member of Parliament);
- (d) Whilst it is preferable, where possible and practicable, for the Commission to put “matters adverse” to an affected person or body in the course of an examination, it may use the process under section 86 of the CCC Act to put “matters adverse” to an affected person or body for the first time and invite representations from the affected person or body so as to give such persons or bodies an opportunity to be heard in relation thereto.

Further in respect of those communications referred to at 3.1(b) and (f) above:-

- (e) In its letter, referred to as 3(h), the Commission pointed out to Mr D’Orazio’s solicitors that section 86 of the CCC Act does not entitle a person the subject of matters adverse to interrogate this Commission;
- (f) Further to the matter at (e), and in the same letter, the Commission indicated that it was not obliged, and indeed it may be a breach of the CCC Act, to provide Mr D’Orazio with portions of its further draft report that recorded “matters adverse” to persons other than Mr D’Orazio; and
- (g) It is no part of the process under section 86 of the CCC Act for this Commission to entertain or respond to requests for information. In this instance, Mr D’Orazio has sought information going to whether Mr Minniti acted on his recorded statements that he would approach DPI on Mr D’Orazio’s behalf. Clearly Mr Minniti did speak to Mr Silvestri regarding Mr D’Orazio, however, whether Mr Minniti acted on his statements to Mr D’Orazio regarding DPI is not the basis for this Commission’s “opinion” – it is Mr D’Orazio’s conduct in being prepared to entertain such offers as evidenced by the telephone intercept material set out below which is at the heart of this Commission’s concerns regarding Mr D’Orazio’s conduct.

3.7 Inappropriate Conduct

Both the PI Report and the D’Orazio submissions raise the issue whether it is beyond the power of the Commission under the CCC Act for the Commission to form an “opinion” that conduct identified by a Commission investigation is “inappropriate”.

The Parliamentary Inspector in the PI Report at paragraphs 45 and 46 made a recommendation relevant to this matter, where he stated:-

45. Hence, although I have recommended to the Commission that it reconsider (in light of Mr D’Orazio’s representations) the inclusion in its Report of the ‘matters adverse’ to Mr D’Orazio, and the expression of an opinion which is not one of ‘misconduct’, I cannot direct the Commission as to what it may include in its Report; nor can I ‘annul’ its decision on what, ultimately, it may include.

46. I should add, for the sake of completeness, that whether or not it is a ‘function’ of the Commission to express such an opinion there remains the question, raised by Mr D’Orazio, of whether the adverse comment is justified. This, too, is a matter which the Commission is further considering.¹⁷

Having received the D’Orazio representations the Commission is obliged by section 86 of the CCC Act to consider them. Further, the Commission has accepted the Parliamentary Inspector’s recommendation and reconsidered the inclusion in this report of “matters adverse” to Mr D’Orazio. Here it is noted that the Parliamentary Inspector has expressed, by way of a recommendation, the following position at paragraph 18 of “The Summary of Findings and Recommendations” resulting from the Parliamentary Inspectors Review and Inquiry.¹⁸ For the reasons set out at section 1.3 above the Commission does not accept a view of its jurisdiction that precludes an “assessment” or “opinion” regarding conduct that is not “misconduct”.

The Commission does accept that where it reports an “assessment” or “opinion” regarding conduct, if it be conduct less than “misconduct” as defined by the CCC Act, that unless the reasoning is manifestly obvious from the context generally, the reasons why the Commission deems it necessary to do so as well as the basis for the reported “assessment” or “opinion”, should be included in its report.

¹⁷ Parliamentary Inspector’s Report, pp 13-14.

¹⁸ Ibid, Summary, p 3.

3.7.1 Parliamentary Inspector's Report, Observations and Findings

At page 14, from paragraph 46, of the Parliamentary Inspector's Report, the Parliamentary Inspector makes the following observations regarding the factual basis of any adverse "matter" or opinion regarding Mr D'Orazio's conduct as revealed by this investigation:

46. *I should add for the sake of completeness, that whether or not it is a 'function' of the Commission to express such an opinion, there remains the question, raised by Mr D'Orazio, of whether the adverse comment is justified.*
47. *The following facts are, in my view relevant to that question, and no doubt will be taken into account by the Commission in its review:*
- (a) *Mr D'Orazio said that he did not believe that Mr Minniti had any such contact with the DPI;*
 - (b) *Several times during his conversation with Mr Minniti he had told Mr Minniti that he did not want him to do anything;*
 - (c) *Before his discussion with Minniti, he had already set in train (through the lady in charge of locating such material at the DPI) a search for the fax, and did not either request or need the assistance of Mr Minniti, whom he knew to be a person who, in the vernacular, was one who 'big noted' himself about alleged contacts and influence with the police and others.*
 - (d) *It was in responding to a claim by Mr Minniti (which Mr D'Orazio said he did not believe) that he had spoken to someone in DPI, to help locate the missing fax, that Mr D'Orazio said "Excellent"; not in response to an offer that he would speak to someone.*
48. *It appears that the 'implicit encouragement' comment is (at least partly) based on Mr D'Orazio's response "Excellent", made to a statement by Mr Minniti during a telephone conversation on 11 May 2006, which lasted in all about 2 1/2 minutes, that he had spoken to someone 'high up' in the Licensing Department who was going to start looking for the fax 'if they could find it'. Mr D'Orazio had already told Mr Minniti that he knew that they were looking for it because he had instructed them the previous day. He also knew that the person responsible was not a male person but a female. It was in that context that he replied "Excellent". At the*

most, that reply is ambiguous, and susceptible of two possible inferences: One, that he was merely trying to cut the conversation off (as he has said); the other that he was 'implicitly encouraging' Minniti to use his alleged 'contacts' in the DPI.

49. *Since Mr D'Orazio was not questioned by counsel assisting the Commission, when he gave evidence in August 2006, on what he meant by "Excellent", and it was never suggested to him, when he gave evidence, that he was thereby 'implicitly encouraging Minniti', it would have been unfair to include such a proposition in the Report (at least without giving Mr D'Orazio the opportunity to make representations, which he has now done); and also referring to the evidence supportive of that adverse inference.*
50. *It is also debateable whether it would be a universally held view, if Mr D'Orazio had 'implicitly encouraged' Minniti to speak to someone 'higher up' in the DPI to see if an important notice faxed to the DPI could be located, that that would be 'inappropriate' conduct.*
51. *There was no suggestion that Mr D'Orazio had sought to use Mr Minniti in order to obtain some improper advantage from the DPI. There was no evidence of that, nor that Mr Minniti did speak to anyone in DPI about the missing fax; nor that he knew anyone 'higher up' in the DPI. And Mr D'Orazio said, on oath, that he did not believe Mr Minniti had such contacts.*

Mr D'Orazio's counsel represents on behalf of Mr D'Orazio that,

Mr D'Orazio notes the Commission's letter ... [dated 21 August 2007] ... and sees that it has 'noted' the Parliamentary Inspector's recommendation in his report, however, the Commission has still failed to accept and or address those relevant recommendations and comments as contained within the report and requests that the Commission turn its mind to what is set out in detail in that report¹⁹

The Commission observes that the Parliamentary Inspector's recommendations have been given careful consideration as has the Parliamentary Inspector's summary of facts that he considered relevant. Ultimately, of course, the Parliamentary Inspector in his report states,

¹⁹ The Ultimate Representations at p 10, heading "Letter from the CCC dated 21 August 2007.

45. *Hence, although, I have recommended to the Commission that it reconsider (in light of Mr D'Orazio's representations) the inclusion in its Report of the 'matters adverse' to Mr D'Orazio, and the expression of an opinion which is not one of misconduct, I cannot direct the Commission as to what it may include in its Report; nor can I 'annul' its decision on what ultimately it may conclude*

This Commission is obliged by section 86 of the CCC Act to consider Mr D'Orazio's representations and it has done so in detail and over a lengthy period of time. The Commission has accepted the Parliamentary Inspector's recommendation to reconsider its proposed report and to reconsider the expression of an opinion which is not one of misconduct. It has done so.

At paragraphs 20-21 of the Summary of the Parliamentary Inspector's Findings and Recommendations on page 4 the Parliamentary Inspector points out,

20. *Representations have also been made on behalf of Mr D'Orazio to the effect that even if it is a 'function' or within power, of the Commission to express an opinion as 'inappropriate' conduct, on an objective analysis of all the evidence before the Commission, it could not be said that his conduct, in talking to Mr Minniti, was 'inappropriate'; and that to infer from his comment 'Excellent'. An 'implicit encouragement' of Mr Minniti was a proposition never put to Mr D'Orazio.*
21. *However, as all of these representations are, at the time of this Report, still (quite properly) under consideration by the Commission, it is not appropriate for me to deal with them, or to express any view on them. It may be best that the final version of the Report will not, in light of the representations made on Mr D'Orazio's behalf, contain any 'matters adverse' to him, but be confined to the finding that there has been no 'misconduct by him; or the 'matters adverse' contained in the 'leaked' report may be modified.*

The Commission accepts that it is required to consider all of the representations made by Mr D'Orazio. It also accepts the Parliamentary Inspector's observation that these are matters for this Commission to resolve in its ultimate report. It has done so. In order to appreciate the Commission's opinions set out below in respect of Mr D'Orazio's conduct it is important to appreciate the nature of the communications between Mr D'Orazio and Mr Minniti between 8 and 11 May 2006.

3.8 Mr D’Orazio’s Communications with Mr Minniti 8-11 May 2006

In the Ultimate Representations, counsel for Mr D’Orazio contends at page 14 that any inquiry by the Commission which did not relate to conduct in which:

- (a) there must have been a police officer involved, and
- (b) that the person under consideration must be a public officer acting in their official capacity and not any private capacity

was outside the “Commission’s terms of reference”. This representation ignores the Silvestri Conversation. In any event, it misunderstands the nature of this Commission’s jurisdiction which has been examined at paragraphs 1.2 and 1.3 above.

Further, to suggest that a public officer purporting to act informally rather than in an official capacity falls outside the jurisdiction of this Commission again misunderstands the Commission’s jurisdiction. Were such a proposition accepted public officers could avoid scrutiny by this Commission simply by acting informally. This representation is not accepted by the Commission.

3.8.1 Telephone Call - 6:54 pm Monday, 8 May 2006

On Monday 8 May 2006, the day that Mr D’Orazio was removed by the Premier as Minister from the Police and Justice Portfolios, Mr Minniti telephoned Mr D’Orazio at 6:54 pm and offered to help him.²⁰

The offer of help was couched in terms of “what’s all happening at the moment”. When Mr D’Orazio requested details of the offer of help, Mr Minniti said “No I don’t, I don’t, I don’t talk on the mobile phone”.²¹

Mr Minniti requested a meeting and Mr D’Orazio agreed. The call did not last more than two minutes. Mr D’Orazio indicated in his evidence to this Commission that, despite agreeing to meet Mr Minniti, he didn’t actually intend to meet him and thought that Mr Minniti would forget about it.²²

²⁰ Mr D’Orazio, Transcript of Hearings, 25 August 2006, p 6. This conversation did not take place “on the morning of 8 May 2006” as contended by Mr D’Orazio’s counsel in the Ultimate Representations at page 3.

²¹ Ibid.

²² Ibid, p 8.

3.8.2 Telephone Call - 6:56 pm Monday, 8 May 2006

Mr Minniti rang back at 6:56 pm, almost immediately after the conclusion of the first call, and made arrangements to meet Mr D'Orazio on Wednesday, 10 May 2006, at 10:00 am at Mr Minniti's workshop.²³

In the Commission's opinion it was clear that the purpose of the meeting was to discuss how Mr Minniti's could assist Mr D'Orazio with his unpaid traffic fines. Mr Minniti asked Mr D'Orazio about his unpaid traffic fines and whether "they were Multinova ones". Mr D'Orazio volunteered that they "were policeman ones". Mr Minniti said "I've got something good up my sleeve, very good".²⁴

Mr D'Orazio, when giving evidence at the public examination, was asked whether he thought 'it was appropriate for a senior member of the Government to go and meet' Mr Minniti at his workshop', and gave evidence that,

The reason I went and saw him was twofold; one because he rang me but I was also going to ask him to do a quote on the repairs to a car. When I got there and he started with the conversation, I didn't do that. I wanted nothing to do it²⁵

Subsequently Mr D'Orazio accepted that he had never asked Mr Minniti to quote on the repairs to his car.²⁶

When giving his account of the meeting with Mr Minniti, Mr D'Orazio, after describing proceedings in the Supreme Court on Monday 8 May 2006 in which Mr D'Orazio had brought proceedings "challenging the fines enforcement registry", stated: -

So, you know, the thought that Pasquale could somehow help me was just stupid.²⁷

²³ Ibid, p 9.

²⁴ Ibid, pp 1-2

²⁵ Mr D'Orazio, Transcript of Hearings, 25 August 2006, p 10.

²⁶ Ibid, p.16, see also dot point 5 in Section 2.6.3 below

²⁷ Ibid

3.8.3 Meeting - Wednesday, 10 May 2006

When asked during his public examination whether he had advised any of his secretaries or parliamentary staff about his meeting with Mr Minniti on 10 May 2006, Mr D’Orazio said “I did on the way to work”, but when asked who he had advised about the meeting he said, “no-one”, and indicated that he had made no diary entry or kept a record of this meeting.²⁸

Mr D’Orazio accepted that his meeting with Mr Minniti on 10 May 2006 took some 15 – 20 minutes.²⁹ Mr D’Orazio gave evidence at the public hearing describing what occurred at the meeting³⁰: -

- when Mr D’Orazio arrived at Mr Minniti’s workshop, Mr Minniti wanted to know the “ins and outs of what was going on”, and Mr D’Orazio, “explained to him that, you know, I’ve been driving under suspension and he couldn’t understand what the fines enforcement agency was and that process”;
- after Mr D’Orazio had explained the situation to him, Mr Minniti said, “I know a lot of people – I know a lot of people in the police force”. Mr D’Orazio asserted that his response was that his problem was with the Fines Enforcement Registry, not the police. Mr D’Orazio said that he explained to Mr Minniti that he had taken the matter to court and that he was confident of success. Mr D’Orazio further explained to Mr Minniti that he had sent a fax to DPI advising them of his change of address, but they could not find it;
- Mr Minniti offered to help find the fax, Mr D’Orazio described Mr Minniti’s offer in the following terms, “...I know someone in DPI I’ll ask them. They can look as well’ and I said, ‘Pasquale, I don’t want you to do anything but if we find the piece of’ – he said ‘If you find the piece of paper, does it help?’ I said, ‘Well, it’ll help yeah. Of course it will’, and he said ‘Well I’ll ask them to’. That was about the conversation ...”;
- when asked whether he had made it very clear to Mr Minniti that he shouldn’t seek to assist him with finding the facsimile Mr D’Orazio said, “... I didn’t make any more comments at that stage because with Pasquale you can say whatever you like and it just goes over

²⁸ Ibid, p.11

²⁹ Ibid, p.13

³⁰ Ibid, pp. 12 - 16

his head and goes away and he just continues doing what he is doing, so you just forget about it ...”,³¹ and

- He stated that he did not talk to Mr Minniti regarding a quote for his smashed vehicle at this meeting. Ultimately Mr D’Orazio indicated that he, “wasn’t going to get a quote on the smashed car – which I didn’t even know where it was ... but if I had to get it repaired and I was going to be paying for it I’d want to get two or three quotes and I was going to ask him for one, but once I was in that meeting I didn’t want to have nothing to do with him ...”.

Even on Mr D’Orazio’s account the meeting focussed on Mr D’Orazio’s difficulties with the Fine Enforcement Registry, a meeting that went for 15 – 20 minutes.

3.8.4 Telephone Messages - Wednesday, 10 May 2006

Following the meeting on Wednesday morning, Mr Minniti left a series of messages for Mr D’Orazio.

The first of these, at 12:17 pm, indicated that Mr Minniti had started to make a “few enquiries” following his meeting with Mr D’Orazio as to his circumstances in relation to driving when under “fines suspension”. Mr Minniti stated, “Yeah, John, this is Pasquale. I’m just letting you know is, I’ve done a few inquiries, okay, about what’s going on right? If no police officer stopped you and told you that you’re under fines suspension you can’t be charged mate”.

He then went on to say, “But I’m still trying to look at the other matter you and I discussed”. Mr D’Orazio gave evidence at his public hearing that when Mr Minniti said “But I’m still trying to look at the other matter you and I discussed” that Mr D’Orazio “assumed it was the DPI letter”.³²

The second message at 12:24 pm indicated that Mr Minniti had by then spoken to a senior sergeant about the Mr D’Orazio’s matter, and that Mr Minniti wanted Mr D’Orazio to ring the senior sergeant. Further, that Mr Minniti had spoken “to someone from DPI” and that they were “going to try and find that form”. Mr Minniti wanted Mr D’Orazio to telephone him.³³

There were two further messages, at 12:33 pm and 12:34 pm, regarding Mr Minniti’s suggestion that “Today Tonight” may be able to help Mr D’Orazio. Of the

³¹ John D’Orazio, Transcript of Hearings, 25 August 2006, p 15.

³² Mr Minniti, Transcript of Hearing, 24 August 2006, p 33.

³³ Mr D’Orazio, Transcript of Hearings, 25 August 2006, p 18.

third and fourth messages, the only significant portion is the reference in the latter when Mr Minniti confirms that Mr D’Orazio has asked him to look for something: -

*John. I will work out firstly of that thing you told me to look for you.
Then secondly maybe Today Tonight might be able to help you.
Ring me back, John. Bye.*³⁴

3.8.5 Telephone Call 12:55 pm - Wednesday, 10 May 2006

Mr D’Orazio then rang Mr Minniti back. This telephone call went for almost four minutes. In the Ultimate Representations, in the account of the history of this matter under the title “Background”, no reference is made to this call. Such an account is incomplete and unhelpful.³⁵

Further, the Initial Representations assert that “the evidence before the Commission clearly establishes that Mr D’Orazio knew from the very first telephone conversation with Mr Minniti on 10 May 2006 that Mr Minniti had no contact at all in DPI and was merely trying to big note himself and ingratiate himself with Mr D’Orazio.”³⁶ Of course, the first phone conversation between Mr Minniti and Mr D’Orazio was on 8 May 2006 not 10 May 2006.

There was only one relevant telephone conversation known to the Commission between Mr Minniti and Mr D’Orazio on 10 May 2006. Further, the representation that, “On the morning of 8 May 2006, Minniti contacted Mr D’Orazio by telephone, having become aware of the matter from the press”³⁷, appears to confuse the timing of the two phone calls from Mr Minniti to Mr D’Orazio at 18:54:34 and 18:56:30 that evening.

Turning to the Commission’s transcript of the telephone call by Mr D’Orazio to Mr Minniti at 12:55:54 on 10 May 2006, it is noted that, in the Ultimate Representations, counsel for Mr D’Orazio contends:

*At the hearing in August 2006 Mr D’Orazio advised the Commission that the telephone call played during the hearing relating to 10 May 2006 was not a complete and accurate recording*³⁸

³⁴ Ibid, p 20.

³⁵ Ultimate Representations pp 2-4.

³⁶ Initial Representations, p. 6, para 35.

³⁷ Ultimate Representations, p.3 para 4.

³⁸ Ultimate Representations, p.13, para 17.

The transcript of the public examination on 25 August 2006 at page 20 records counsel assisting playing Exhibit 94 (the Commission's recording of the conversation initiated by Mr D'Orazio with Mr Minniti between 12:55:54 and 12:59:29 on 10 May 2006). Following the call being played, Mr D'Orazio stated in answer to the question by counsel assisting, "Sorry. Yep, There's – the tape recording we've heard, is that the whole tape". To which counsel assisting replied "Yes, that's the entire conversation". Mr D'Orazio then challenged the completeness of the recording:

Because I remember him saying to me when he told me to ring Sergeant Hailes, me saying to him, 'Pasquale, what is he going to do for me?' and then he said to me, 'Oh, what have you got to lose?' and I said, 'Okay. Give me the number' and I did it and that not on this tape. So I remember that quite clearly because I remember at the time trying to get him out of my hair³⁹

Counsel for Mr D'Orazio then added:

And there's a portion there which is a little bit muffled and that is right after – at the bottom of page 1, where Mr D'Orazio says 'Yep', there's a conversation that is not completely recorded. Perhaps your technological staff might be able to enhance that...⁴⁰

Mr D'Orazio then gave evidence that some portions of the conversation had not been recorded.⁴¹ As a result of this representation, Commission staff were asked to enhance the recording, if possible, and report as to whether there was any significant portion of the conversation not transcribed. A report has been prepared and it appears at Appendix B.

The Commission is satisfied that the transcript is complete and accurate and that, on balance, any contention that the transcript is incomplete or that the conversation included exchanges that are not transcribed, of the type described by Mr D'Orazio,⁴² should be rejected.

It is for these reasons that the Commission does not accept the representation that:

At the hearing in August 2006, Mr D'Orazio advised the Commission that the telephone intercept dated 10 May 2006 at 12:55 pm was not the complete recording, and that had the full and complete version been played, it would clarify Mr D'Orazio's

³⁹ John D'Orazio, Transcript of Hearings, 25 August 2006, p.21

⁴⁰ Ibid

⁴¹ Ibid, p 22.

⁴² Ibid, pp 20-22.

*evidence that he vigorously interrogated Minniti about Hailes would do anything (sic) and that nothing in that conversation was inappropriate. The true recording would establish the fact that Mr D'Orazio did not want Minniti to do anything and to desist from assistance.*⁴³

It is implicit in this representation that if the transcript is complete, and that is the Commission's opinion, then the transcribed conversation does not evidence "the fact that Mr D'Orazio did not want Minniti to do anything and to desist from assistance". However, the telephone intercept ultimately speaks for itself and it is on this basis, and no other, that this Commission has founded its opinions.

In the Commission's opinion, at the time that the telephone call was initiated by Mr D'Orazio at 12:55:54 on 10 May 2006, it was clear at this stage that Mr D'Orazio had received the messages left for him by Mr Minniti. Mr D'Orazio commences the conversation by observing "I already know I can't be charged".⁴⁴

The only reference in any of these messages to anything that Mr D'Orazio has indicated to Mr Minniti that he is looking for, is "the form" – when he states, "And also, uhm, I spoke to someone from DPI. We're going to try and find that form".⁴⁵ During the course of the subsequent telephone call from Mr D'Orazio at 12:55 pm, Mr Minniti uses the word "form" when he is referring to the "faxed copy" (consistently with his message of 12:24 pm) that Mr D'Orazio has indicated he is seeking to locate at the DPI.⁴⁶

In Mr D'Orazio's call to Mr Minniti at 12:55 pm, when Mr Minniti uses the word "form", there is no attempt by Mr D'Orazio to clarify what Mr Minniti meant by "the form" and no apparent confusion as to what they were discussing. The only document about which Mr D'Orazio gave evidence that he had discussed with Mr Minniti at the meeting of 10 May 2006 was the facsimile to DPI. A facsimile, the date of which, he was "trying to narrow down". This appears in the transcript of Mr D'Orazio's evidence at the public hearing where he is describing his meeting with Mr Minniti and he states,

... the matter's been adjourned pending the filing of some more documents. At the moment I – in the affidavit I've indicated that I'd changed my address by phone but I also believe that I've sent them a faxed copy and I'm going to go to my office and try and narrow the dates down, because the people at DPI said if I could actually narrow the dates down, because the people at DPI said if I could

⁴³ Ultimate Representations p13, para (25)

⁴⁴ Mr Minniti, Transcript of Hearing, 24 August 2006, p 33.

⁴⁵ John D'Orazio, Transcript of Hearings, 25 August 2006, p 18.

⁴⁶ Ibid, p 20.

*actually narrow the dates down, they could check their paperwork, and if - ...*⁴⁷

In the course of the telephone call at 12:55 pm on 10 May 2006, Mr D'Orazio and Mr Minniti have the following exchange about "the form" : -⁴⁸

MINNITI: *Okay. Now also, senior sergeant said to, senior sergeant, Senior Sergeant Hailes said to me there is a special form what you fill, in, right, and send it into the DPI. They have to find that form, you know what I mean? But I'm tryin' to it through the back door to, you know, to make things quicker. You know what I mean?*

D'ORAZIO: *Yeah, but I gotta know, to do that I gotta know the exact date and I don't.*

MINNITI: *Yes, okay, and listen; but you told me it was two thousand and four. Correct?*

D'ORAZIO: *Yeah, two thousand and four but, I mean, they, they've got, they've got so much paperwork*

MINNITI: *Yeah, I know*

D'ORAZIO: *that they want a specific day*

MINNITI: *Yeah. Okay. I understand that. But you told me it was about October, October ...*

D'ORAZIO: *No. It's January '04*

MINNITI: *Oh, January '04*

D'ORAZIO: *Yep*

MINNITI: *Okay. Like I thought you said October to be honest, right?*

D'ORAZIO: *Yeah. I did but*

MINNITI: *Now*

D'ORAZIO: *uhm, its January ...",*

and later in the same telephone conversation⁴⁹

"...

MINNITI: *Listen, I just want you to ring up Senior Sergeant Hailes and if you could explain to him what's goin' on then, then after, because he said to me, he said to me, he goes, he goes, if no police officer has stopped you and told you*

⁴⁷ Ibid, p 14.

⁴⁸ Ibid, p 20.

⁴⁹ Ibid, pp 4 - 5

D'ORAZIO: *No, no, mate. But I know that already but that's not my problem, uhm, because they can't charge me for that. But the problem*

MINNITI: *Yeah.*

D'ORAZIO: *I got is*

MINNITI: *Yeah*

D'ORAZIO: *in politics it's the fact I was driving without a licence*

MINNITI: *Yeah.*

D'ORAZIO: *Cost me my job, so*

MINNITI: *Okay, okay. Well, speak to him, he might*

D'ORAZIO: *Yeah*

MINNITI: *He might know he might know of something else of helping you. You understand*

D'ORAZIO: *Mm*

MINNITI: *Speak to him please, and*

D'ORAZIO: *Have to sort it out*

MINNITI: *And be, besides that I'm going to try and get you that form*

D'ORAZIO: *Okay*

MINNITI: *Yeah. Now*

D'ORAZIO: *The form is the most important*

MINNITI: *Now, now, eh?*

D'ORAZIO: *That form is absolutely vital*

MINNITI: *Okay, Well I'm doing my very best for you. Okay?*

D'ORAZIO: *Thanks*

When asked about this issue during the public examination Mr D'Orazio said that, despite describing the "form" as "absolutely vital", he did not know what Mr Minniti was offering to look for. He said in answer to the question, "And you know he is looking for it--?"⁵⁰

... No I don't. I actually know then that he's not looking for it because there is no form, and I was trying to get him off the phone because all he kept on going on about was how he wanted to do things, and I just wanted him to stop doing anything but he just wouldn't get the drift

In the Commission's opinion, Mr D'Orazio's answer is hard to reconcile with the lengthy exchange between Mr Minniti and Mr D'Orazio in the telephone conversation at 12:55 pm on 10 May 2006 regarding "the form". A discussion in which both parties refer to a document dated 2004, without any apparent

⁵⁰ Mr D'Orazio, Transcript of Hearings, 25 August 2006, p 21.

confusion as to the document they are discussing. This representation was repeated in the Ultimate Representations.⁵¹ Mr D’Orazio cannot “know” what contact Mr Minniti had with DPI. Equally Mr D’Orazio cannot say “that he knew that Mr Minniti was not assisting him in any event as he knew nothing about the fax because Mr D’Orazio never talked to Mr Minniti about a form”.⁵²

Equally the preparedness of Mr D’Orazio to discuss the nature of his difficulties belies the representation on behalf of Mr D’Orazio that Mr D’Orazio did not provide Mr Minniti with “licence details”, “last know (sic) address” or “specific dates”. Here it is noted that Mr Minniti intended Mr D’Orazio to speak directly with Senior Sergeant Hailes.

Even was it the case that Mr D’Orazio knew that Mr Minniti had no contact in DPI, it is no explanation for Mr D’Orazio’s conduct in entertaining Mr Minniti’s offers of assistance to find “the piece of paper” or the “form”. This is because it is Mr D’Orazio’s preparedness to entertain Mr Minniti’s offers to assist in finding the form by, “... tryin’ to it through the back door to, you know, to make things quicker...”, which concerns this Commission. This suggests that Mr Minniti was prepared to seek to assist Mr D’Orazio in the manner described, and that Mr D’Orazio was prepared to entertain such offers of assistance.

In the Commission’s opinion, Mr D’Orazio knew that references to “the form” during this telephone conversation were references to the facsimile to DPI which Mr D’Orazio was seeking to locate. Thus the following exchanges during the telephone conversation at 12:55 pm on 10 May 2006 become significant to the Commission’s inquiry:

- Mr Minniti gives Mr D’Orazio Senior Sergeant Hailes number – Mr D’Orazio gave evidence that he called that number immediately after speaking to Mr Minniti. Mr D’Orazio said he made the phone call to get Mr Minniti “out of his hair” ;⁵³
- Mr Minniti indicates that he had spoken “to a very good friend of mine who, who’s in charge of the DPI” (this is consistent with Mr Minniti’s offer to get someone he knew at the DPI “to look for the piece of paper” as described by Mr D’Orazio in his account to the Commission) ;⁵⁴
- Mr Minniti states that his “very good friend ... who’s in charge of the DPI” is “trying to find that form you are telling me right”;

⁵¹ Ultimate Representations. p 13, para 14.

⁵² Initial Representations, p 9, para 60.

⁵³ Mr D’Orazio, Transcript of Hearings, 25 August 2006, pp 21 – 22.

⁵⁴ Ibid, pp 14 – 15.

- Mr Minniti explains the advice that he has received from Senior Sergeant Hailes as to what Mr D’Orazio should do:

“... Okay. Now also, senior sergeant said to, senior sergeant, Senior Sergeant Hailes said to me there is a special form what you fill, in, right, and send it into the DPI. They have to find that form, you know what I mean? But I’m tryin’ to it through the back door to, you know, to make things quicker. You know what I mean?....”;
- Mr Minniti states, “Anyway I’ll try to get this form for you”, alright” to which Mr D’Orazio replies, “find that form it would be good. I’ve ...”, Mr Minniti says “yeah alright” and Mr D’Orazio replies “They are already looking for me but we will just see what we can find. Uhm this Sergeant Hailes, what is he gonna tell me?”, and
- Ultimately Mr Minniti has the following exchange with Mr D’Orazio: Minniti: “And be, besides that I’m going to try and get you that form”, D’Orazio: “Okay”, Minniti: “Yeah. Now”; D’Orazio: “the form is the most important”, Minniti: “Now, now, eh?”; D’Orazio: that form is absolutely vital”.

In the public hearing Mr D’Orazio was asked “Did you make it very clear to him ... [Mr Minniti] ... that he shouldn’t do that ... [get someone from DPI to look for the faxed notification] ..., that he shouldn’t ask?” Mr D’Orazio stated,

I didn’t – I didn’t make any more comments at that stage because with Pasquale you can say whatever you like and it just goes over his head and goes away and he just continues doing what he was doing, so you just forget about it.⁵⁵

Mr D’Orazio’s evidence in this respect is consistent with the Commission’s opinion that the transcription of this telephone call at 12:55 on 10 May 2006 was complete. The nature of this telephone conversation, initiated by Mr D’Orazio in response to recorded messages by Mr Minniti, is entirely at odds with the representations on Mr D’Orazio’s behalf that,

Mr D’Orazio at no time enlisted, sourced or requested the assistance of Mr Minniti,⁵⁶ and

The telephone call of 11 May 2006 and all other calls were initiated by Minniti and not by D’Orazio⁵⁷

⁵⁵ Ibid, p 15.

⁵⁶ Ultimate Representations, p 6, para 6.

3.8.6 Telephone Call 7:53 am - Thursday, 11 May 2006

The following day Mr Minniti telephones Mr D'Orazio and the following exchange occurs⁵⁸:

D'ORAZIO: *Hello.*

MINNITI: *Good morning, John. How're you goin'?*

D'ORAZIO: *Good, Pasquale. How are you mate?*

MINNITI: *Yeah, goin' alright. Listen, I'm letting you know is, er, eh, the thing is on its way of, of the DPP. I've spoken to him it's on its way of them, lookin' for it, okay?*

D'ORAZIO: *Well I know they're looking for it because they, they, I instructed them yesterday.*

MINNITI: *Yeah. Okay. I know that but I'm letting you know I spoke to someone.*

D'ORAZIO: *Yeah*

MINNITI: *Who's high up in the DPP, y'now the licensing department?*

D'ORAZIO: *Yeah*

MINNITI: *And he is going to start looking for me if they could find it.*

D'ORAZIO: *Okay*

MINNITI: *Okay. Eh*

D'ORAZIO: *Excellent.*

Later in the same conversation, Mr D'Orazio, whilst he declines further assistance from Mr Minniti, then appears to accept his assistance with regard to the search for the facsimile at DPI: -⁵⁹

MINNITI: *Listen, okay, John listen, I'm sorry. I'm just trying to help because I reckon*

D'ORAZIO: *I know you are, but don't, don't say anything to anyone because I don't need any more at this stage*

MINNITI: *No, no, no,. Fair enough. Listen eh I'll run things past you before I do anything. Okay?*

D'ORAZIO: *Yep. Don't do anything*

MINNITI: *No worries. Listen. All's I've done at this stage is I've spoken to a friend of mine, yeah, ah, from licensing, what d'you call it, DPI or whatever*

⁵⁷ Ibid p. 7 para 22.

⁵⁸ Mr Minniti, Transcript of Hearings, 24 August 2006, p 33.

⁵⁹ Ibid, p 3

D'ORAZIO: *Yep*

MINNITI: *And, uhm, he's gonna push today, oh, like he's gonna assign one girl, yeah, eh, y'know, to, eh, to go back and look for you. You with me?*

D'ORAZIO: *Yep*

MINNITI: *uhm, y'know, you just ring me let me know and I'll do it. You know what I mean?*

D'ORAZIO: *Yep. Thank you very much Pasquale*

3.9 Commission's Opinions

The Commission notes that Mr D'Orazio's stated explanation for his on-going dialogue with Mr Minniti was not an attempt by him to get assistance in circumventing proper process, but was in fact simply an unsuccessful attempt to make a persistent Mr Minniti go away.⁶⁰ Mr D'Orazio asserts that he, "at no time requested or enlisted the help of Mr Minniti on this or any other matter".⁶¹

However, it is clear from conversations between Mr D'Orazio and Mr Minniti that Mr D'Orazio's concerns regarding alleged traffic infringements and his loss of licence were discussed in some detail over at least four days between Monday 8 May 2006 and Thursday 11 May 2006. The telephone intercept material set out of section 3.8 speaks for itself in this regard.

Between Monday 8 May 2006 and Thursday 11 May 2006 Mr D'Orazio was under significant pressure. He began Monday morning as the Minister for Police and Emergency Services, Justice and Community Safety but was removed from the Police and Justice Portfolios by the Premier on that day. He then became Minister for Disability Services; Citizenship and Multicultural Interests; Seniors and Volunteers, before resigning from the Ministry the following day, Tuesday 9 May 2006. Mr D'Orazio ended a somewhat tumultuous four day period as the Member for Ballajura in the Legislative Assembly. It is represented, on behalf of Mr D'Orazio⁶² that he was not under "significant pressure" as "any pressure had been alleviated by 2:30 pm on Tuesday 9 May 2006" when he "resigned". To the extent that Mr D'Orazio was under pressure after his resignation, it appears, from the telephone intercepts played at his public hearing, to have focussed on his difficulties with the Fines Enforcement Agency.

During this period, and despite the publicity, Mr D'Orazio was able to attend a private meeting with Mr Minniti on 10 May 2006, which on Mr D'Orazio's own account was to discuss matters in Mr D'Orazio's interest, not Mr Minniti's. It was

⁶⁰ Mr D'Orazio, Transcript of Hearings, 25 August 2006, p 21.

⁶¹ Initial Representations, p 6, para 13.

⁶² Ultimate Representations p 16, para 5.

not a meeting with a constituent to discuss an elector's problems or concerns. Mr D'Orazio told no-one about his meeting with Mr Minniti; he made no record of it. Mr D'Orazio returned Mr Minniti's messages on 10 May 2006, after their meeting that morning, knowing that Mr Minniti was trying to assist him by putting Mr D'Orazio in touch with Senior Sergeant Hailes and, at least, purporting to have searches made within DPI for the missing facsimile.

Mr D'Orazio, in response to questions asked by Mr Minniti, provided information to Mr Minniti regarding the nature of his unpaid traffic fines in that they were not "*Multinova ones*", they were "*policeman ones*". In the telephone conversation at 12:55 pm on 10 May 2006, Mr D'Orazio went to some lengths to communicate to Mr Minniti the date of the document that he was looking for within DPI. This is inconsistent with an attempt simply to "make a persistent Mr Minniti go away". Mr D'Orazio now seeks to make the point that Mr Minniti did not possess additional personal information regarding Mr D'Orazio which would have assisted him to make a search within DPI.⁶³

Like many of the representations made on Mr D'Orazio's behalf, his counsel puts propositions that Mr Minniti did not "know", or Mr Minniti "did not have", something. Neither Mr D'Orazio nor his counsel can give evidence regarding what Mr Minniti knew or what he had. These representations, made repetitively, are unhelpful and cannot be accepted. Even if Mr D'Orazio did not give Mr Minniti personal information such as licence details or his last known address, this does not mean that Mr Minniti did not have them or couldn't get them. This investigation clearly revealed Mr Minniti's contacts in this regard. Ultimately whether Mr Minniti had such details is not the basis upon which this Commission's opinions are based.

This Commission's opinions are based on the tenor, content and substance of the telephone interception material at section 3.8 herein.

Mr D'Orazio's responses to Mr Minniti's offers to help (set out at section 3.8) must have encouraged Mr Minniti to believe that Mr D'Orazio accepted Mr Minniti's attempts of help. They are inconsistent with Mr D'Orazio's explanation that he tried to discourage a persistent Mr Minniti, and his assertion that he did not enlist help from Mr Minniti. Indeed, Mr Minniti clearly thought that Mr D'Orazio wanted his help; this is demonstrated by the Silvestri conversation at 7:26pm on 8 May 2006. In the Commission's opinion, Mr D'Orazio's conduct, as described herein, was consistent in that he did not actively and unequivocally reject Mr Minniti's offers of assistance.

Even in their telephone conversation on the 11 May 2006, when responding to Mr Minniti and telling him "don't say anything to anyone because I don't need any more at this stage", Mr D'Orazio did not specifically tell Mr Minniti not to pursue the search for the DPI facsimile, and completed that call by thanking Mr Minniti for

⁶³ Ultimate Submissions, p 6, para 9-12.

his attempts to locate the facsimile by getting his contact at DPI to assign a member of staff to look for Mr D'Orazio.

The meaning of Mr D'Orazio's comment of "Excellent" in the telephone conversation with Mr Minniti of 11 May 2006 (part way through that conversation) has to be understood in the context of the whole course of his communications with Mr Minniti which began on 8 May 2006 and continued to 11 May 2006, and the entire conversation on 11 May 2006, including the last portion referred to above. Further, it must be understood in the context of the whole of the conversation on 11 May 2006. To this extent, the Commission accepts the representation to that effect on behalf of Mr D'Orazio, it does not however accept the meaning ascribed to the whole of the conversation on 11 May 2006 contended for by counsel for Mr D'Orazio,

At no time did Mr D'Orazio implicitly encourage Minniti in the use of the words (sic) 'Excellent' as this word was and has been taken out of context by the Commission and given undue weight. The whole conversation shows that Mr D'Orazio stated to Mr Minniti that he did not want him to do anything, on not one but on two occasions. The words were clear and unambiguous and they have no other means of interpretation, yet the Commission has failed to consider them and give any consideration to them⁶⁴

The word "Excellent", in the conversation on 11 May 2006, speaks for itself.

Mr D'Orazio, in his evidence describing his meeting with Mr Minniti in the workshop on 10 May 2006, stated that Mr Minniti said, "I know someone in DPI I'll ask them". At this point Mr Minniti was offering that he would speak to someone at DPI not that he had spoken to someone at DPI. At no time did Mr D'Orazio tell Mr Minniti he did not believe that Mr Minniti had the contacts that he purported to have within DPI or WAPOL, nor did he suggest that Mr Minniti stop calling him regarding the subject of the missing facsimile. It was Mr D'Orazio that telephoned Mr Minniti in response to Mr Minniti's messages on 10 May 2006. Even in the final conversation on 11 May 2006, Mr D'Orazio did not instruct Mr Minniti to desist in that search and in the final portion of that conversation Mr D'Orazio accepts and thanks Mr Minniti for his attempts to locate the facsimile. Here the Commission refers to the final portion of the conversation:

MINNITI: *Listen, okay, John listen, I'm sorry. I'm just trying to help because I reckon*

D'ORAZIO: *I know you are, but don't, don't say anything to anyone because I don't need any more at this stage*

MINNITI: *No, no, no,. Fair enough. Listen eh I'll run things past you before I do anything. Okay?*

⁶⁴ Ultimate Representations p 7, para 21.

D'ORAZIO: *Yep. Don't do anything*

MINNITI: *No worries. Listen. All's I've done at this stage is I've spoken to a friend of mine, yeah, ah, from licensing, what d'you call it, DPI or whatever*

D'ORAZIO: *Yep*

MINNITI: *And, uhm, he's gonna push today, oh, like he's gonna assign one girl, yeah, eh, y'know, to, eh, to go back and look for you. You with me?*

D'ORAZIO: *Yep*

MINNITI: *uhm, y'know, you just ring me let me know and I'll do it. You know what I mean?*

D'ORAZIO: *Yep. Thank you very much Pasquale*

The Commission does not accept the representation that:

The Commission provides an opinion that Mr D'Orazio did not actively and unequivocally reject Mr Minniti's offers of assistance when there is clear evidence before the Commission to the contrary and the playing of the telephone call dated 11 May 2006 shows the emphasis that Mr D'Orazio did not want Mr Minniti to do anything, and not speak to anyone. This was an emphatic rejection of anything which Minniti could or may have done in his own mind to assist Mr D'Orazio. In fact there is no such assistance given, available or undertaken by Minniti.⁶⁵

Even were Mr D'Orazio to have made it clear on 11 May 2006 that he did not accept Mr Minniti's offers of assistance, he would then have entertained them for some four days. In the Commission's opinion, whatever the language used by Mr D'Orazio in his dealings with Mr Minniti, and whatever the status of Mr D'Orazio's own inquiries of DPI, he continued to engage Mr Minniti in discussions regarding how Mr Minniti might assist him for four days. The manner in which Mr D'Orazio left the matter in the telephone conversation of 11 May 2006 is not, in the Commission's opinion, an unequivocal refusal of assistance.

The Commission does not accept the representation that:

Mr D'Orazio stated to the Commission that he had unequivocally told Minniti that he did not want his (purported) help and did not want him to do anything at tp.15 yet the Commission refuses to address this aspect of the evidence.⁶⁶

⁶⁵ Ultimate Representations p.16 ultimate paragraph

⁶⁶ Ultimate Representations p.8 para 36.

Mr D’Orazio, when asked whether he had “made it very clear” to Mr Minniti that he shouldn’t seek to assist Mr D’Orazio by having someone search for the facsimile at DPI, accepted that he had not, albeit that he said he “tried to be as definitive as I could be with Pasquale”.⁶⁷

The nature of the communications between Mr D’Orazio and Mr Minniti between 8 and 11 May 2006 speak for themselves and, in the Commission’s opinion, demonstrate that Mr D’Orazio failed to unequivocally or actively discourage Mr Minniti’s offers of assistance. This Commission uses the word “actively” to mean that Mr D’Orazio could simply have stopped taking or making calls to Mr Minniti.

At no stage did Mr Minniti specifically assert that his contact in the DPI was in charge of licensing. He refers to “I know people in the DPI”⁶⁸, “I know someone in DPI”,⁶⁹ “I spoke to someone from the DPI”,⁷⁰ “a very good friend of mine who, who’s in charge of the DPI”,⁷¹ and a male “who is high up in the DPP, y’know the licensing department”.⁷²

Based on the material adduced during the public examinations it was unclear when Mr D’Orazio instructed anyone at DPI to make a search for the missing facsimile.

In the Ultimate representations, the following representation was made:

*In the meeting on 10 May 2006 with Minniti, Mr D’Orazio indicated that he was going to the office to give more specific details as to the date... [of the facsimile] ... to DPI. This date was found by obtaining police and insurance report (sic) about the incident which occurred in January 2004. Mr D’Orazio made a telephone call on 10 May 2006 before 1200 pm from his office and spoke with Tanya at DPI, after which she arranged for a search for the four week period from January 2004 for the fax and not the form. This is evident from the affidavit of Mr Brandis from DPI which has been provided to the Commission, yet the Commission has not directed its attention to this document.*⁷³

The point is made that the affidavit of Mr KENNETH JAMES BRANDIS of the Department of Planning and Infrastructure, sworn on 7 June 2006 in Supreme

⁶⁷ John D’Orazio, Transcript of Public Hearings, 25 August 2006, p 15.

⁶⁸ Ibid, p 14.

⁶⁹ Ibid, p 15.

⁷⁰ Ibid, p 20.

⁷¹ Ibid.

⁷² Ibid, p 24.

⁷³ Ultimate Representations, p11, para 6, see also p 9, para 46.

Court proceedings CIV 1508 of 2006 (“Brandis Affidavit”), provided to the Commission by letter from Hammon Worthington dated 26 September 2007 confirms that:

- Mr D’Orazio made a telephone call on 10 May 2006 to “Tanya” at the DPI before 12:00pm from his office;
- “after which she arranged a search for the four week period from January 2004 for the fax”⁷⁴

Mr Brandis does not depose to the two points above in the body of the Brandis Affidavit. The purpose of the Brandis Affidavit is to inform the Court as to the various entries in respect of Mr D’Orazio’s Motor Drivers Licence (MDL 1731156) and Motor Vehicle Licence 9ER616 on the Transport Executive and Licensing Information System (TRELIS system).

The records annexed to the Brandis Affidavit include the “Contact History Records” for MDL 1731156. The Commission has itself obtained a complete copy of the “Contact History” (“Contact History”), because of the poor quality of the copy Brandis Affidavit provided.

The Contact History has three entries for 10 May 2006. Unlike some of the other entries on the system which describe a reference to Tanya – on 3 May 2006 and 12 May 2006 – there is no record of any referral of an inquiry to Tania on 10 May 2006. It is unclear whether the three entries for 10 May 2006 are a single call or three separate calls. In any event each entry is made by the operator “D Richardson”. The three entries state:

10 May 2006

- (1) “1731156, Ordinary, Mr D’Orazio making an inquiry regarding COA ... [understood as Change of Address]... which was forwarded to our office via fax late in Nov/Dec ’04 advised client will investigate further and return his call”;
- (2) “1731156, Ordinary, Updated contact details for correspondence purposes”, and
- (3) “1731156, Ordinary, Pras # S12417-T1 Please recall days work for the week commencing 07/01/04 – 20/01/04 to locate a fax on Electoral Office letterhead from fax # 9375 1941 regarding COA”.

The time of this call or calls cannot be ascertained from TRELIS.

There is an earlier entry for the week beginning Monday 8 May 2006, on the Monday, and a subsequent entry on 12 May 2006, they state:

⁷⁴ Ultimate Representations, p 11, para 5-7.

8 May 2006

- “1731156, Ordinary, CLIENT REQUESTED DETAILED LETTER FOR ADDRESS HISTORY, LETTER OF REQUEST FILED IN DAYS WORK REFER p262667”, and

12 May 2006

- “1731156, Ordinary, Query from consultant re client for pras on COA advised consultant to put call through to Tania”.

The Contact History does not support the contention that Mr D’Orazio spoke to “Tania” on 10 May 2006, nor does it indicate when that call was made. It does establish that Mr D’Orazio made contact with the DPI on 10 May 2006 and as a result a request was made to “recall days work for the week commencing 07/01/04 – 20/01/04 to locate a fax on Electoral Office letterhead from fax # 9375 1941 regarding COA”.

The Commission accepts that Mr D’Orazio contacted DPI and spoke to, at least, the operator ‘D Richardson’ and that as a result DPI instituted a search on 10 May 2006 for the missing facsimile in the period between 7 and 20 January 2004.

The timing of the contact with DPI on 10 May 2006 is unclear.

The only earlier contact noted in the Contact History in the week commencing 8 May 2006 did not initiate a search for the missing facsimile. Whenever that search was initiated on 10 May 2006 it was not, even on Mr D’Orazio’s account, prior to the meeting with Mr Minniti at his workshop.

Certainly Mr D’Orazio told Mr Minniti in their telephone conversation on 11 May 2006 that he had instructed the DPI yesterday, that is, sometime on Wednesday 10 May 2006.⁷⁵ This was the first time that Mr D’Orazio told Mr Minniti in such unequivocal terms that he had given DPI such an instruction.

In Mr D’Orazio’s account of the meeting at the workshop on 10 May 2006, it is clear that Mr D’Orazio had not provided DPI with enough information to make an effective search at that stage, albeit that he told Mr Minniti, “Well Pasquale, they’re already looking for it because I’ve already spoken to DPI. I need to go and give them a different – you know some more information because they’ve got thousands of written pieces of paper and they need to be more specific”. When this account is considered in the context of the Contact History it appears inaccurate in that there was no record of any search prior to 10 May 2006.

⁷⁵ Mr D’Orazio, Transcript of Hearings, 25 August 2006, p 24.

In the Commission's opinion it is more likely than not that, during the period between Mr Minniti's first telephone call on 8 May 2006 and the end of the meeting in Mr Minniti's workshop, Mr D'Orazio did not initiate a specific search for the facsimile by DPI. During this period, on his own account, Mr D'Orazio could not have been confident that he had enough information to enable DPI to locate the missing facsimile.

Mr D'Orazio states that he spoke to "Tanya" at 12:00 on 10 May 2006 and initiated the search for the missing facsimile. However, the terms of the telephone conversation at 12:55 pm on 10 May 2006 after the workshop meeting suggests that Mr D'Orazio still had to provide more specific information to DPI when he acknowledges that, to find the form "I gotta know the exact date and I don't".⁷⁶ In the Ultimate Representations Mr D'Orazio refers to a specific date, albeit that this is not recorded in the Contact Details.

In the end Mr D'Orazio was uncertain whether he had enough information to find the facsimile, even when he instructed DPI – whenever he did so on 10 May 2006. Certainly in the telephone conversation at 12:55 on 10 May 2006 Mr D'Orazio told Mr Minniti that he needed to know the exact date "and I don't". During this period of uncertainty Mr D'Orazio focussed on the form as "absolutely vital" and was clearly willing to entertain offers of assistance from Mr Minniti. Mr D'Orazio described the form as "absolutely vital" in his telephone conversation with Mr Minniti at 12:55 on 10 May 2006.

Mr Minniti, in the Silvestri Conversation, gave the impression to Senior Constable Silvestri that he had Mr D'Orazio's imprimatur to assist Mr D'Orazio. Mr Minniti had suggested to Mr D'Orazio that his contact in DPI had assigned a member of staff to "look for you".⁷⁷ Mr D'Orazio cannot, of course, be responsible for the manner in which Mr Minniti chose to communicate with Senior Constable Silvestri. However Mr D'Orazio's preparedness to attend private meetings with Mr Minniti, return phone calls regarding the missing facsimile and to entertain offers of assistance (or at least not to actively and unequivocally reject them), provided Mr Minniti with a factual basis upon which he could represent to third parties that he had a "close" relationship with Mr D'Orazio and that Mr D'Orazio was accepting his help.

Members of Parliament and Ministers of the Crown have a leadership role within the Western Australian public sector and their conduct has significant importance. While there is no single objective standard by which conduct can be measured and whilst propriety may not be susceptible of close definition, conduct which is "inappropriate" or "improper" must at least amount to conduct that is "discreditable or dishonourable".⁷⁸

⁷⁶ Ibid, p 20.

⁷⁷ Ibid.

⁷⁸ Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, Part 1, Vol 1, pp 1-31 (submission on behalf of Mr Kevin Edwards)

In making a judgement as to the relevant standard in any particular case the office of the particular person, is relevant. Implicit in the concept of conduct that is “inappropriate” is that the conduct in question is not appropriate for the particular person having regard to what is expected from his or her status or appointment or the trust reposed in him or her.⁷⁹ As noted above, for a Minister of State or a Member of Parliament, conduct that is “inappropriate” would fail to be gauged against the principles, standards and values articulated in the literature as underpinning the operation of accountability systems in the Western Australian public sector as they apply to such persons as being “suitable or fitting”. Further, it is well known that one of the tests for “impropriety” by a professional person is the norm of behaviour that might be expected of other members of his or her group so that particular conduct may be measured against such norms.⁸⁰

To the extent that it applies to Mr D’Orazio’s conduct on 8 and 9 May 2006, the Ministerial Code of Conduct states at paragraph 2 of the Introduction that,

“Being a Minister of the Crown demands the highest standards of probity, accountability, honesty, integrity, and diligence in the exercise of their public duties and functions. They must ensure that their conduct does not bring discredit on the Government of the State”.

The representation made on behalf of Mr D’Orazio is that:

*“The Commission’s claim that as a Government Minister Mr D’Orazio’s actions were inappropriate would indicate that there had been a breach of the Ministerial Code of Conduct”.*⁸¹

is misconceived because the Ministerial Code of Conduct is, of course, only one marker of the standard of conduct to be expected by the community of its Ministers. The Code of Conduct is essentially a non-exclusive commentary on the required standard of conduct and does not bind this Commission. On this basis there is no room for the proposition implicit in Mr D’Orazio’s representation.

In this instance it would be artificial to try and divide Mr D’Orazio’s conduct into periods in which he was a Minister and periods when he was a Member. It would be wrong to apply the Ministerial Code of Conduct to his course of Conduct over the four day period between 8 and 11 May 2006. It is noted that the Commission’s draft proposed report has been amended to accurately reflect Mr D’Orazio’s status during this period. This emphasises the role of section 86 representations.

⁷⁹ Ibid.

⁸⁰ Ibid

⁸¹ Initial Representations p 4, para 15.

In this case, the Commission is of the opinion that when a Minister or Member of Parliament is faced with offers of assistance in a private matter from a member of the public, being:

- offers which purport to utilise unofficial channels apparently available only to that member of the public;
- which rest on relationships which enable only that member of the public or his or her associates to solicit advice or action from, or by, a government agency or the release of information by such an agency; and
- are introduced as being “*tryin’ to it through the back door*” so as “*to make things quicker*”,

then, the acceptance of, or failure to actively and unequivocally reject, such an offer would be” inappropriate” conduct by such a Minister or Member of Parliament. The Commission’s opinion does not rest on the proposition that Mr D’Orazio’s conduct over the period between 8 and 11 May 2006 constituted a breach of the Ministerial Code of Conduct. Were the Commission’s opinion to rest on such a proposition it would be met by the observation that Mr D’Orazio was not a Minister at 10 and 11 May 2006.

The Commission does not accept the representation that:

The Commission makes the comment that ‘For a Minister of the State or a Member of Parliament ... ‘apply to such persons acting in their official capacity. When in the present circumstances there was no suggestion that Mr D’Orazio was acting as a Minister for State or Member of Parliament at the time he dealt with Minniti. The Commission states that the important point is the articulation of a ‘standard’ against which the conduct in question can be assessed. But this presupposes that the conduct in question is, may or has given rise to misconduct and that the person in question is acting in an official capacity.’⁸²

The public expects and their offices demand, that Ministers of State and Members of Parliament will engage the public sector of this State appropriately. To suggest that such persons can seek to obtain treatment not available to the public, or to do things through “the back door” cannot be accepted. It is the Commission’s opinion that any Minister or Member of Parliament faced with an offer of assistance, such as those made by Mr Minniti and set out above, has an obligation to actively and unequivocally discourage the member of the public making the offer. Active discouragement means unequivocal rejection of such an offer and a refusal to participate in meetings or discussions regarding such an offer. It may require a report by the Minister or Member to an appropriate authority.

⁸² Ultimate Representations pp bttm 15 - top 16.

In this instance Mr D'Orazio received offers of assistance from a panel beater to obtain action by the DPI and information from WAPOL. The offers were accompanied by the provision of a telephone number for a senior sergeant of police.

The attempts to assist Mr D'Orazio described by Mr Minniti in his telephone conversations with Mr D'Orazio anticipated that information sought by Mr D'Orazio could either be informally obtained, or more speedily obtained, from a government agency (being information required by a Minister or Member in his own private interest).

Mr D'Orazio continued to meet with, and talk to, Mr Minniti over four days regarding such activity; activity which was to be pursued outside official channels. It is likely that, at least until the end of the telephone conversation initiated by Mr D'Orazio with Mr Minniti at 12:55 pm on 10 May 2006, Mr D'Orazio did not have enough information to instruct DPI to make a specific search for the missing facsimile.

Mr D'Orazio's attempts to discourage Mr Minniti were, at best, half-hearted and never reached the point of unequivocally telling Mr Minniti to abandon any attempt to locate the missing DPI facsimile. Mr D'Orazio provided information to Mr Minniti regarding the nature of his traffic infringements and the date of the missing facsimile.

At no stage in the course of their communications between 8 May 2006 and 11 May 2006 does Mr D'Orazio tell Mr Minniti that his offers are inappropriate, improper, misguided or wrong.

After assessing all of the information obtained during the course of the investigation, the Commission is of the opinion that Mr D'Orazio has not committed an act of "misconduct" as defined by section 4 of the CCC Act in respect to these matters. That is to say, there is no evidence to support a conclusion that he has acted corruptly or that he has engaged in conduct that could constitute an offence or a disciplinary offence providing reasonable grounds for termination under the PSMA.

Regardless of the above opinion, the Commission questions the appropriateness of Mr D'Orazio's actions, as a Government Minister on 8 and 9 May 2006 and thereafter as a Member of the Legislative Assembly, in failing to actively and unequivocally discourage Mr Minniti from seeking to use his contacts in WAPOL and the DPI on Mr D'Orazio's behalf to obtain informal advice regarding Mr D'Orazio's traffic infringements and to seek to locate a facsimile within DPI. In the circumstances described above, to fail to actively and unequivocally discourage any such activity by a member of the public is, in the Commission's opinion, inappropriate conduct by either a Minister of the State or a Member of Parliament.

The apparent preparedness of a Minister and later a Member of the Legislative Assembly to entertain offers of help from a panel beater who professed to have contacts in the DPI and WAPOL, offers of aid couched in terms of having “something good up my sleeve” and “tryin’ to it through the back door to, you know, to make things quicker”, is behaviour that may foster “misconduct”. Conduct that, in these circumstances, this Commission is obliged by the CCC Act to identify as conduct that may potentially lead to “misconduct”, and censure as likely to lead to “misconduct” in the performance of its prevention and education function.

Mr D’Orazio’s conduct in his communication with Mr Minniti between 8 and 11 May 2006 inclusive, first as a Minister and then as a Member of the Legislative Assembly was in the Commission’s opinion “inappropriate”.

3.10 Further Matters

Ultimately, the Commission needs to address two further matters.

3.10.1 Solicited Statement

First, in the course of Mr D’Orazio’s public examination, Mr D’Orazio made a special request of the then Commissioner in the following terms, if the Commissioner

*... could make some comment on the basis because the publicity yesterday and today has affected my family to such a degree, and myself, and I need in some public form to be given some sort of bill of health because I think it is unfair what has occurred to me yesterday and today*⁸³

To which the Commissioner replied:

*I suppose the only comment I can make is this, and I repeat it again and, as Mr Tooker has said, this was not an inquiry into Mr D’Orazio. It was an inquiry into other people, into other situations that the Commission saw as of great concern. More or less by accident Mr D’Orazio walked into it and attracted the attention and publicity which has evolved and Mr D’Orazio had to be mentioned, as I say he was there but as part of the Minniti Inquiry*⁸⁴

⁸³ Mr D’Orazio, Transcript of Hearings, 25 August 2006, p 32.

⁸⁴ Ibid, p 33.

This was a statement solicited by Mr D’Orazio. It does no more than indicate the provenance of Mr D’Orazio’s role in the Commission’s Inquiry. Reference to it in the D’Orazio Representations can clothe it with no more significance than is described above, it is not a “finding” of this Commission.

3.10.2 Section 86 Process: Not Pre-judgment

Second, it is asserted on behalf of Mr D’Orazio that:

The fact that findings have already been in the public arena as a result of the leak of the report, calls into question the ability for (sic) the Commission to render an impartial assessment of the representations made for and on behalf of Mr D’Orazio. The findings, assessments and opinions are already cast in writing in the absence of representations, thus the Commission has already rendered a decision based upon its view of the evidence and materials before it pertaining to Mr D’Orazio. The perception thus being that the opinions offered by the Commission are already (sic) pre-determined⁸⁵

This representation misunderstands the nature of the Commission’s jurisdiction and its processes. The Commission does not make “findings” in the sense that a court makes findings on admissible evidence presented by competing parties in an adversarial situation, nor at all. The Commission does not “render decisions”, it offers “assessments” and “opinions” based on the material gathered in an investigation.

Even more importantly, the Commission will always be obliged to provide persons or bodies who may be affected by “matters adverse” in a proposed report a reasonable opportunity to make representations. This process requires the Commission to reduce such “matters adverse” to writing and present them to the person or body affected. By doing so the Commission is simply complying with Section 86 of the CCC Act. When the Commission provides such an account of “matters adverse” it remains open to persuasion by representations made on behalf of the affected person or body that an “assessment” or “opinion” which is a “matter adverse” may need to be amended or abandoned.

In this case the Commission has been at considerable pains to afford Mr D’Orazio an opportunity to make representations pursuant to section 86 of the CCC Act and the history of this process is set out above. These efforts have been hampered by acts beyond the Commission’s control. The Commission has always been obliged by law and prepared to consider the merits of any representations advanced by, or on behalf of, Mr D’Orazio. In this instance the Commission is properly seized of

⁸⁵ Initial Representations p 12, para 76.

this matter according to law and, in the circumstances, makes this to report to Parliament in accordance with the CCC Act.

In his Ultimate Representations, counsel for Mr D'Orazio advances a series of propositions that this Commission has "failed to address....aspects of.... Previous representations", "has already pre-judged the matter", has failed to act impartially and faithfully in the performance of its function of the office", "has pre-determined the findings, opinions, assessments that Mr D'Orazio is not actively and unequivocally refusing Minniti's offers of assistance gave rise to inappropriate behaviour when there is no clear evidence he did not do so". None of these representations are explained or particularised. These representations misapprehend the section 86 process which require this Commission to provide notice to "matters adverse" to relevant persons or bodies pursuant to section 86 of the CCC Act. This process may suggest, to the lay observer, that the Commission has reached a final position. Such a conclusion entirely misapprehends the process legislated for at section 86 of the CCC Act because such provisional opinions that are expressed must always be the subject of further consideration by this Commission. The Commission cannot engage such unparticularised assertions and after assessing them, must reject them.

CHAPTER FOUR – SYSTEMIC ISSUES

4.1 Introduction

The Commission's investigation identified a number of examples of misconduct by police officers as a consequence of their relationship with Mr Minniti. These were, in part, the result of police officers ignoring procedures and the applicable code of conduct. There is also, however, a systemic element to the misconduct, with certain procedures being deficient and a culture which did not discourage inappropriate relationships. The risks associated with the inappropriate relationships, and the seriousness of the consequences, did not appear to be properly understood.

The key systemic issues to arise are:

- the formation of inappropriate relationships between police and members of the public, which create the circumstances that promote a perceived obligation to provide improper or unlawful advice or assistance;
- the unauthorised access and disclosure by police of protected WAPOL information from police computer mainframes and databases;
- improper or unlawful action by police in the withdrawal of traffic infringement notices; and
- deficiencies in processes, procedures, and protocols adopted by WAPOL concerning the withdrawal process of lawfully issued traffic infringement notices.

4.2 The Formation of Inappropriate Associations

This investigation highlighted the potential for corrupt behaviour when a police officer becomes compromised by a seemingly innocent relationship.

Police officers, like all members of the community, lead private lives; however, as police officers, they are entrusted with very significant and far-reaching discretionary powers and have access to highly sensitive and confidential information. This can make them vulnerable to approach by unscrupulous people who wish to have access to such information or who seek unlawful or unauthorised special treatment. Inappropriate relationships may result in behaviours and outcomes that adversely affect police operations, jeopardise WAPOL protected information, and damage the reputation and standing of WAPOL in the community.

It is therefore important that police officers remain vigilant to the possibility of inappropriate relationships developing, and are aware of their powerful position in society. Inappropriate relationships may often commence in an innocuous way, for example through a simple transaction such as the purchase of an item, a casual conversation, or a cup of coffee. Over time, the relationship may develop into greater contact, and eventually lead to action which compromises or appears to compromise the police officer. A conflict of interest arises where the police officer is required to make a choice between providing or receiving a private or personal benefit and the impartial performance of his or her duty. This investigation demonstrated that, over time, such a conflict of interest can eventually result in serious misconduct. Once compromised, a police officer becomes vulnerable to pressure to engage in further misconduct.

It is neither feasible nor desirable to prevent police officers from forming personal relationships with others outside the police. What is required is a better understanding of their role as police officers in their private lives. The management of such conflicts of interest is often misunderstood, and the potential for it often underestimated. Training and education on these issues is vital to ensure that police officers understand their role and do not 'step over the line'. Officers need to be proactive in rebuffing improper approaches for information or special favours.

Coupled with this, it is important that WAPOL maintains processes whereby allegations of inappropriate relationships can be reported confidentially and dealt with properly and fairly. The culture of WAPOL needs to support officers and staff coming forward to report potentially inappropriate associations. Managers and senior executives play a vital role in reinforcing the need to remain vigilant to inappropriate relationships, and to deal proactively with situations where the potential for inappropriate relationships exists.

The WAPOL Code of Conduct makes explicit mention of the need for an officer to remove himself or herself from situations where they are required to deal with a person who is a family member, friend, or associate. An extract from the Code of Conduct reads...

Your private interests cannot conflict, or objectively be perceived to conflict, with your public duty.

You must ensure that you behave or act in a manner that is objective and without bias of:

- *Personal beliefs or attitudes;*
- *Personal or business interests or rights; or*
- *The interests or rights of your family, friends, or colleagues.*

In matters involving a family member you must remove yourself from the inquiry, other than to provide moral support.

An actual, or objectively perceived conflict of interest must be reported immediately to your supervisor.

When you become aware of an inquiry or matter requiring police attention, involving a friend, associate or person with whom you have had a relationship, you are not to become involved with the inquiry or matter.

Despite this, there was evidence in this case where officers failed to declare any actual or potential conflict of interest and, in fact, continued to make decisions on matters relating to friends and associates. In some cases, they went to some lengths to conceal the fact that they had a personal relationship with the person whose application they were handling. These officers were acting in breach of WAPOL's Code of Conduct.

4.3 Commission's Assessment

In the Commission's view, despite clear information contained in the WAPOL Code of Conduct and in ethical guidelines, some officers have failed to understand or accept obligations placed upon them in relation to a conflict of interest. Firstly, they have failed to identify, by any objective measure, that there is potential for a conflict of interest. Secondly, they have failed to declare that interest to their manager or supervisor, so that, in the interests of transparency and accountability, it can be recorded and managed. Thirdly, they have continued to deal with a matter from which they are expected to remove themselves, placing the reputation of the organisation at risk; and finally, in contravention of due process and fairness, they have used their powers as a police officer to bring favourable treatment to the matters being considered.

Police officers and staff must understand and conduct themselves in accordance with the requirements of the WAPOL Code of Conduct with regard to conflicts of interest and personal relationships. While the Commission acknowledges that the WAPOL Code of Conduct is clear, it is apparent that there are officers who either do not take it seriously, or do not understand the consequences of non-compliance, either for themselves or the wider community. Given this, WAPOL should review its education and training programs to ensure that Police Officers and staff are aware of, and are regularly reminded of, their obligations in these areas and the consequences of failure to meet these obligations.

Recommendation 2

The Commission recommends that WAPOL review the policies and procedures relevant to the operations of the Traffic Office in order to ensure that policies and the relevant sections of the Code of Conduct are understood, particularly with regard to:

- 2.1 Actual, potential and perceived conflicts of interest; and**
- 2.2 Access to confidential information**

4.4 The Unauthorised Access and Disclosure of Protected Information.

The Royal Commission Into Whether There Has Been Corrupt Or Criminal Conduct By Any Western Australian Police Officer, known as the Kennedy Royal Commission (KRC), noted that confidential information held by WAPOL may have a high value to some people in the community. A breach of privacy involving confidential police information may imperil the safety or rights of the person affected. If uncontrolled, breaches may permit corrupt relationships to develop between police officers and criminals.

WAPOL databases contain information that has real value to people who do not have lawful access to it. The KRC had concerns that unauthorised accessing of information and disclosure was a significant problem in WAPOL. This view was based on the frequency of instances arising during the KRC hearings of unauthorised access. It is likely that, due to the difficulty at the time of detecting such offences, known instances and/or complaints of unauthorised access and disclosure were seen as the 'tip of the iceberg' in relation to total such unauthorised instances.

This problem is not unique to WAPOL, and reflects the experience of agencies and other police jurisdictions. Modern technology has resulted in a proliferation of stored information to which many public officers have ready access. Reports from other jurisdictions have provided examples of disclosure of information to unauthorised parties being undertaken for a range of reasons, including: (1) in exchange for payment or material favours such as gifts or benefits; (2) because they believed the person(s) to be trustworthy; (3) because they believed the information was required in relation to people avoiding lawful obligations, or (4) simply out of curiosity.

The purpose of seeking the information might range from searches on behalf of friends in relation to disputes, motor vehicle accidents and the like, a debt collection agency pursuing an absconding debtor on behalf of an aggrieved creditor, or organised crime figures trying to obtain the whereabouts of a protected witness. There is a need for all agencies to send a clear message that unauthorised access and disclosure is a serious matter that it is easily monitored and it will be dealt with firmly.

Regardless of the reason or purpose, and regardless of whether or not a benefit accrues to the person accessing and disclosing the information, unauthorised access and disclosure of protected WAPOL information is an offence under the Criminal Code. Despite measures taken to improve systems, policies, and awareness of this issue, this investigation demonstrated that unauthorised access and disclosure continues to be a problem for WAPOL.

Since the KRC, there have been some legislative amendments to section 440A of the Criminal Code, which concerns the offence of unlawful use of restricted

access computer systems and provides a range of penalties in relation to the type of misuse.

In relation to the specific Information Technology (IT) systems utilised in the State Traffic and Coordination Branch for managing infringements, in mid 2006 a new computer system was introduced. This constitutes a significant enhancement to both functionality and accountability in the management of traffic infringements. The new system provides for digital images to be included in infringement notices, and for comprehensive auditing of processing and decision making on infringement notices. The Commission has been advised that the new system is covered by auditrak and has a considerably more sophisticated audit capacity than the previous system, which was much more of a manual system. WAPOL now considers that it is possibly the most auditable of all of their systems. Everything, including all changes, is trackable.

Printouts from the new system and behind-the-scenes auditing screens which detail the Police Department number of the officer were viewed by the Commission. These audit screens are available only to a limited number of officers and there are strict controls on who accesses them. Even the OIC of the Infringements area would have to seek permission to access them. In the view of WAPOL, it would now not be possible to make changes to an infringement notice without the officer's identity being tracked. The Commission considers that this is a major advance which will address many of the technical shortcomings of the previous system.

Further enhancements to the new IT system are planned for the future.

Comprehensive organisational understanding and acceptance of a 'zero tolerance' approach to unauthorised access and disclosure obviously requires commitment and education at all levels of the organisation. The Commission's public examination has provided a heightened profile for such issues. This matter provides a case study to improve awareness and compliance with the 'zero tolerance' approach. Effective reporting and auditing systems provide a structural framework for the 'zero tolerance' approach.

4.5 Commission Assessment

The Commission acknowledges that WAPOL has taken steps to improve audit systems and raise awareness of the unacceptability of unauthorised access and disclosure of protected information.

The Commission also acknowledges that WAPOL has restated its commitment to a 'no tolerance' approach, and a focus on issues surrounding unauthorised computer use or misuse. WAPOL's action in charging officers who have accessed and/or disclosed information when not authorised to do so signal its determination to address such transgressions.

All these measures are timely and welcome. Policing work relies on recording, storing, and accessing increasingly larger amounts of data. The protection of that data and ensuring its integrity requires a multi-faceted approach. WAPOL officers and staff need to understand and exercise vigilance in complying with information security requirements, and to realise that IT systems are able to appropriately store information, as well as audit the access and release of information.

However, in the Commission's view, the measures taken will not be effective unless the risks are adequately recognised in the formal planning process. By including the issue of the inappropriate access and disclosure of confidential information in the planning processes and developing strategies to both highlight the issue and to manage possible breaches, it will become more difficult for it to be treated lightly by police officers and staff, and it will make the protection of such information core business.

Similarly, the issue of inappropriate relationships and the risks of conflict of interest should not be seen as peripheral, but as centrally important to the integrity of WAPOL and the confidence the community has in it. By including strategies that both highlight and manage the issue in the formal planning process, WAPOL will elevate its importance and make it part of its cultural core.

There also needs to be a formal and rigorous review process that tracks the effectiveness of changes made. While changes made already, and those planned by WAPOL, appear to address concerns raised in this report, until a comprehensive post-implementation review is undertaken it will not be possible for either WAPOL or the community to be confident that the problems have been solved. Such a review process will also enable WAPOL to adjust the system to address any deficiencies.

Recommendation 3

The Commission recommends that WAPOL review its policies and procedures to ensure that the issues of unauthorised access and disclosure of confidential WAPOL information and the establishment of inappropriate relationships are adequately addressed.

Recommendation 4

The Commission recommends that WAPOL undertakes a review of its new computer system within two years to ascertain whether or not it is providing the audit capacity expected and identify any deficiencies, and to report on the findings of its review and any remedial action in its Annual Report.

This investigation has identified a number of instances where WAPOL processes, procedures, and protocols were circumvented or ignored.

The investigation found a number of instances where a police officer both recommended and then, when acting in a higher position, approved an application for the withdrawal of a traffic infringement. This constituted a failure to appropriately separate duties, and can lead to improper or corrupt conduct. To ensure accountability, it is generally necessary for approvals to be made by an officer other than the officer making a recommendation on the case. If this is not the case, it is prudent that a notation be made as to why the recommending officer is the same person as the approving officer.

Recommendation 5

The Commission recommends that WAPOL policies and procedures be reviewed to ensure that they:

- 5.1 discourage officers from dealing with inquiries involving or referred to them by their family, friends or associates, and that procedures are in place to manage circumstances where such dealing is unavoidable;**
- 5.2 require the officer who makes the final decision to withdraw a traffic infringement be a different and more senior officer to the officer who recommends that the matter be withdrawn, and that all reasons for withdrawal are fully documented;**
- 5.3 ensure that when an officer writes, types or dictates statutory declarations on behalf of another person, auditable documentation of the reasons for his or her doing so is provided.**

The Commission acknowledges that WAPOL has begun to take steps to address deficiencies in processes and procedures, and has implemented a new computer system that is designed to reduce the risk of a recurrence of the misconduct identified in this report.

The Commission also acknowledges that WAPOL has restated a commitment to a 'no tolerance' approach with regard to the accessing and release of confidential police information and a focus on issues surrounding unauthorised computer use or misuse. WAPOL's action in charging officers who have accessed and/or disclosed information when not authorised to do so signals its determination to address such transgressions.

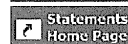
APPENDIX A

Premier's Media Statement, 8 May 2006.

Media Statement - Alan Carpenter on 8/5/2006

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Government of Western Australia
Media Statement



Statement Released: 8-May-2006
Portfolio: Premier

A statement from Premier Alan Carpenter

8/05/06

Today I have removed John D'Orazio from the Police and Justice portfolios in State Cabinet.

I believe the action was necessary because of a situation that has arisen involving non-payment of traffic fines, which resulted in the Minister losing his driver's licence temporarily.

Mr D'Orazio will stay a Minister, but with the new responsibilities of Disability Services; Citizenship and Multicultural Interests; Seniors and Volunteers.

Late last week, Mr D'Orazio informed me he had received a letter from the Fines Enforcement section of his own Justice portfolio confirming that he had lost his licence for an unpaid \$100 speeding fine incurred in August last year.

He told me he had sent a late cheque to pay the fine.

The Minister was unaware the cheque had not been accepted because payment was too late. He received no follow up advice that the fine remained unpaid because the reminder notices were being sent to his old address in Noranda.

Mr D'Orazio says the problem centres on an administrative failure to record a change of address notification he had lodged by telephone with the Department of Planning and Infrastructure in 2003.

The fine was eventually paid on April 24 this year, when Mr D'Orazio's wife went to pay another outstanding \$100 fine, this one from last October.

The D'Orazios were alerted to the fine by the occupant of their old Noranda address - where the reminder notices were being sent.

It was then that Mr D'Orazio discovered his licence had been suspended in relation to both occurrences. The suspension had dated from February 22 this year.

Payment of the fine meant that the licence was automatically restored, but the Minister had been unwittingly driving without a licence for two months.

To compound the problem, he was involved in a traffic accident on April 21, which he had quite properly reported to the police.

Mr D'Orazio is appealing against the cancellation of his licence through the

<http://www.mediastatements.wa.gov.au/media/media.nsf/d3ea7ba6c70aeaac48256a730...> 6/09/2007

courts.

Despite that, I believe he had a clear responsibility to ensure his fines were paid on time, especially given his portfolio responsibilities.

In September last year as Minister for Justice, he launched a campaign that targeted 40,000 Western Australians who had lost their driver's licences through non-payment of fines.

In my view, and after careful consideration of the matter, I do not believe Mr D'Orazio can continue as Minister with responsibilities for fines enforcement and road traffic matters.

I have therefore made the change announced earlier.

Minister John Kobelke will add Police, Emergency Services and Community Safety to his existing portfolios; Margaret Quirk will become Minister for Justice, as well as retaining Women's Interests and assisting with Federal Affairs; and David Templeman will relinquish Seniors and Volunteering while retaining Community Development; Youth and assisting Minister for Planning and Infrastructure.

Premier's office: 9222 9475

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APPENDIX C

The Use of Telecommunications Interceptions by the Commission

Telecommunications interceptions

- The Corruption and Crime Commission is authorised to conduct telecommunications interceptions.
- They are an important tool in the investigation of misconduct.
- As they are intrusive, their use is strictly controlled by laws established by the Commonwealth Government.
- Warrants authorising the Commission to undertake telecommunications interceptions are only granted for the investigation of serious offences. Generally serious offences are punishable by at least seven years' imprisonment.
- They are only granted where the interception is likely to assist the investigation. They are not granted for 'fishing expeditions'.
- The Commission's power to conduct telecommunications interceptions is identical to that of the Western Australia Police and other agencies in Australia that exercise the powers.

Legislation

- The relevant Commonwealth legislation is the *Telecommunications (Interception and Access) Act 1979* (TIA Act). This Act regulates the interception of telecommunications by security agencies, police services and other approved bodies such as the Commission.
- Each state has its own legislation to allow the federal legislation to operate in conjunction with local laws. The legislation in Western Australia is the *Telecommunications (Interception) Western Australia Act 1996*.

Laws controlling telecommunications interceptions

- Warrants to undertake telecommunications interceptions are only granted after an application supported by a sworn affidavit is made to a specially appointed federal judicial officer.
- To obtain a warrant the Commission must address issues that include:
 - what other methods have been used to investigate the allegation of misconduct;
 - the gravity of the conduct being investigated;
 - how the information obtained from a telecommunications interceptions would help the investigation; and
 - the impact on the privacy of any person.

- Intercepted material has to be held securely, access to it is restricted and it can only be communicated to other agencies that have permission to receive it under the *TIA Act*.
- The State Ombudsman acting, as an agent for the Commonwealth Ombudsman, audits the process from the registration of the warrants to the use of the intercepted material.

Commission's use of telecommunications interceptions

- The use of material by the Commission from telecommunications interceptions in public hearings is determined by the so-called Proportionality Test that assesses if the revelation of the information:
 - is relevant to the matter being investigated;
 - advances the public interest; and
 - is warranted in terms of the potential for damage to the reputation of individuals and/or organisations.
- The Commission sees no benefit to the public interest or its own reputation in disclosing material that is not strictly relevant to the investigation, particularly if it results in inappropriate damage to the reputation of individuals or organisations.
- In public hearings, the Commission will ordinarily give a witness the opportunity to give evidence about conversations of relevance to the investigation.
- However, if the witness is unable to recollect or gives evidence that contradicts other evidence gathered by the Commission, the Commission has a legitimate purpose in using telecommunications interceptions when examining a witness.

(This summary has been prepared by the Commission to help explain its use of telecommunications interceptions. The legislation is complex and the relevant Acts should be referred to for further detail)