

Neil Winzer

RECEIVED  
30 OCT 2008  
BY: LACA

Submission No. 59
Date Received.....

30<sup>th</sup> October 2008

M.L.

Committee Secretary  
House of Representatives Standing Committee on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

**Inquiry into whistleblowing protections within the Australian Government public sector**

In the public interest all 'authorities' should be accountable.

The debate associated with the 'Haneef matter' prompted me to submit to the Board of the Australian Crime Commission that one of its members has, or may have had, engaged in corrupt conduct and consequently, the integrity and professional standards of the Board may have been compromised.

Given the documentation I have in support of my concerns about the appointment of that member of the ACC Board I believe it was reasonable to have asked for a 'put up or shut up' opportunity. I understand that the appointment of that member carried with it the presumption that the appointment process was legally valid. That in turn means there is a heavy burden on me in terms of evidence if I am to impugn the process leading to that member's appointment. I was / am prepared to bear the consequences if my submission is found to be frivolous or vexatious.

I provided the ACC with details of the disadvantages I've sustained as a result of making disclosures. Extracts from my request of the ACC for protection and their response are attached.

However, after extensive inquiries I discovered that the Board of the ACC is not accountable. I had discovered this before I reached the Office of the Inspector-General of Intelligence and Security where I obtained the following confirmation:

While I will certainly bring your correspondence to Mr Carnell's attention upon his return, having read the material which you forwarded to this office my preliminary view is that the issues you have raised do not fall within the remit of this office, and that there does not appear to be a specialist Commonwealth agency with appropriate jurisdiction to pursue the matters you wish to raise.

Although I am not aware of the material you wish to adduce, the correspondence which you attached to your letter to Mr Carnell suggests that the matters you wish to raise are intrinsically state-based in nature and would be best handled by a competent state based authority in Western Australia.

I appreciate that the person you have raised concerns about sits on the board of the Australian Crime Commission (ACC), and that the ACC is a multi-jurisdictional body

with significant Commonwealth level inputs, and it is for this reason (amongst others) that you are seeking intervention/investigation by a Commonwealth body.

The most logical body to deal with concerns about the ACC is the Australian Commission for Law Enforcement Integrity (ACLEI). I note from your correspondence that you have already approached the Integrity Commissioner (i.e. the head of ACLEI) and been advised that ACLEI does not have any jurisdiction with respect to the ACC Board. I have no reason to doubt this advice.

This being so, you would appear to have few other options available at the Commonwealth level, other than to make a direct approach to the Minister with responsibility for the ACC, namely the Minister for Justice, the Attorney-General (who is the senior Minister in the Attorney-General's portfolio), or to the Prime Minister. I note that you have already written directly to the Minister for Justice and the Prime Minister.

If any of the above Ministers are unable or unwilling to assist you, for whatever reason, the only alternative I can suggest which you appear not to have exhausted would be to approach the Western Australian Parliamentary Commissioner for Administrative Investigations (this is the formal title of the person who performs the functions of the WA Ombudsman).

I approached the then Federal Minister for Justice, Senator David Johnston, in regard to the Federal aspects of my claim. Because my claim is based entirely on documentation I did not accept Senator Johnston's advice about "problems in investigating the various allegations you have made, as the erosion of time casts an undeniable ambiguity over the facts in a number of ways."

So, you might ask, what is the problem in relation to the IGIS advice for me to approach an appropriate WA authority.

The short answer is, as it has been no less than four years that I've been pressing WA authorities in regard to this matter, I believe it is reasonable to assume that those authorities are not going to allow me to present my evidence.

It is worth noting as background that this matter that I say impacts upon the Board of the ACC has its origins in questions I asked within the scope of my duty statement in 1995. My questions developed into concerns and on 18.9.98 I submitted a formal claim of corruption against the WA Department of Transport, now Planning and Infrastructure. My claim, as to fraud, misappropriation, abuse of office, falsification of records and perjury, was not investigated as reported by the WA Police Service (WAPS):

It [WAPS report of 23.4.04] noted that previously, Mr Winzer's complaints had been considered by other bodies, with the following results:

- Anti Corruption Commission (ACC): concluded it had no jurisdiction, and suggested that the allegations be raised with the Public Sector Standards Commission.
- Public Sector Standards: did not consider there was reason to proceed beyond an informal consideration, and agreed with the Community and Public Sector Union

not to investigate, as it considered the appropriate body to act was the ACC. It informed Mr Winzer that his complaints were “essentially of an industrial nature”.

- State Ombudsman: said no action would be taken on the allegations.

(Source: Parliamentary Inspector’s report of 29.12.06)

In regard to this matter that I say impacts upon the Board of the ACC the Commissioner of the WA Corruption and Crime Commission reported on 14.8.08 to the Parliamentary Inspector as follows:

The Commission will be writing to Mr Winzer advising him that on the information he has provided so far there does not appear to be grounds for the Commission to conduct a further interview with him or any action other action (sic) in relation to his concerns about this matter.

However, it is untruthful for the CCC to say “provided so far” because they have simply rejected all my requests for the opportunity to present the documentation. That documentation pertains to my claim that WAPS acted with a conflict of interest in order to shield two individuals who were directly involved in the appointment of the aforementioned member of the ACC Board.

Furthermore, the CCC failed to respond to the submissions made in 2007 by a then Minister, and two former Members of the Legislative Council in regard to their interviews with WAPS. In their own way, all three had submitted that the investigating detective had falsely reported that “none [of those he interviewed] provided any supporting evidence of the allegations of corruption or perjury made by Mr Winzer.”

To provide you with some understanding as to the standard of the CCC’s 14.8.08 report in regard to the broader aspects of the public interest claim, I note that:

- Following their acknowledgement of having **failed to discover any documentation** to support the ‘*Winzer failed when asked to substantiate his claim*’ advice that my employing department had disseminated widely since 1999, the CCC determined as truthful the testimony given by senior officers as to my claims having been “discussed” with me. That is, the CCC determined that “discussions” were sufficient to address my claims of fraud, abuse of office, perjury etc;
- Having declared their determination as to a critical meeting having been about ‘A’, the CCC then ‘overlooked’ the fact that ‘Z’ had been the outcome of that meeting as recorded in the form of advice given to the WA Public Sector Standards Commission, psychiatrists and the WA Parliament; and
- Despite the fact that question without notice No. 1800 of 2004 was about “records relating to Mr Winzer’s public interest claim”, and despite the fact that the parliamentary record back to 2000 shows that my claim has only ever been fundamentally about one thing, the CCC determined as follows:

The Minister’s answer and the documents tabled in Parliament on 4 May 2004 [No. 1800 of 2004] do not deal with Mr Winzer’s EBA claims.

It is a very common theme in the stories of whistleblowers that they are simply worn out as a result of years of waiting for one authority or another to make a determination and endless 'rides on the merry-go-round'. It is very frustrating to discover that there is no avenue left open to you to argue when an authority, after exercising extreme and blatant bias in their choice of or interpretation of evidence, simply advises that "[they] do not share [your] view".

My submission to you is simply that an individual's title or the legislation over which they preside means nothing if there is no accompanying transparency and genuine accountability.

The protection that I explained in my letter of 22.2.07 to the ACC was necessary has never been provided by any authority. I believe that the authorities consider that any acknowledgement that I need any degree of protection would be tantamount to an acknowledgement that there was some substance to the public interest claim I initiated.

Yours sincerely

Neil Winzer

PS.

During the period I was pressing to be allowed to present the documentation I have in support of my concerns about the appointment of the aforementioned member of the ACC Board, one of the key individuals involved directly in that appointment was awarded an Order of Australia. Later, another of the key individuals was awarded the Public Service Medal.

My initial concern was, given that it was widely known in WA that the public interest claim I'd initiated had yet to be resolved, that the recommendations for these awards had been made by somebody who knew the situation or somebody who had failed to conduct an adequate background check. My view was that ordinary 'J Citizen' wouldn't have been provided an award under these circumstances.

I offered the Governor-General documentation showing that at the time the first individual was awarded the WA Police Service were acting on the recommendations of one of their detectives for an investigation of "official corruption" and had consequently led me to believe that they had included that individual in their investigations. Ultimately I found out that neither of the individuals I've referred to were interviewed by WAPS.

On behalf of the Governor-General I was advised on 30.6.08 as follows:

... I regret that I have to inform you that unless you can provided documentary evidence (records of conviction or professional disciplinary action) to substantiate your claims, neither the Governor-General nor the Honours and Awards Secretariat is able to assist you.

I had previously advised the Governor-General, in great detail, of the fact that the failure of all the WA authorities to subject these individuals to an investigation was fundamental to my concerns. Obviously, you don't get a conviction if you don't investigate.

I cite this as another example of a failure to provide transparency and accountability.

**EXTRACT FROM MY LETTER OF 22.2.07 TO THE ACC**

Dear Mr Milroy

**My meeting with your Mr Gough scheduled for 10am, Friday 23<sup>rd</sup> February 2007**

I have provided 6.2.07 and 15.2.07 detail of the disadvantages already sustained by my family and I as a direct result of my efforts in making a public interest disclosure. I have also provided evidence of threats made against me. The disadvantages to which I've referred, imposed on me while I was still in the workplace and since I've left the workplace, range from vilification to the stopping of my pay.

I continued to sustain disadvantages after WA monitoring and regulatory authorities were involved. Moreover, I claim, it was as a consequence of the involvement of WA authorities that I continued to sustain disadvantages.

It may be interpreted that the threats I have referred to have never constituted a threat to either my life or that of any member of my family.

However, as this matter has been effectively suppressed for many years but is now edging slowly toward the possibility that some of those against whom I've made a claim being faced with some measure of accountability, I must contemplate the possibility of disadvantages more serious than I've previously sustained. On numerous occasions, when I've discussed my circumstances with those who would be defined as ordinary and reasonable people, I've been cautioned as to my welfare. In the context of claims of fraud, abuse of office, perverting justice and perjury, a measure of accountability may present as a concern to some. It may be that those involved, including union leaders and those who have previously received high accolades for what has been perceived as their contribution to society, would not relish that prospect.

As the strength of my claims is largely in the form of existing records, I've also been warned of the potential for action to be taken in order to destroy those records.

While I do understand that the ACC would not and could not intervene in regard to my requests for a re-start of my pay, my thinking is that a statement as to what extent I would be protected by the ACC would be appropriate. I hope for something beyond advice in regard to my circumstances falling outside the 'square' normally confronting the ACC and not warranting the imposition of a 'fully-blown' witness protection program.

**THE ACC'S RESPONSE OF 27.2.07 TO MY REQUEST FOR PROTECTION WAS AS FOLLOWS:**

The ACC has reviewed your request for protection. At an interview with the ACC officer on Friday 23 February 2007 you were not able to demonstrate any threat to the safety of yourself or your family. Therefore, the ACC will not consider this request any further.

As the matter you raise are state based, if you believe your safety is under threat, you should contact the Western Australian Police Service as the relevant authority responsible for witness protection in WA.