

ATTACHMENT

THE 'TOOMER AFFAIR' AND AUTHORITY'S CULTURE OF LOYALTY

By Keith Potter - former Chairman, Promotions Appeal Committees, Australian Public Service
1970-1980

Foreword:

It is important to understand the culture's damage to Mr Toomer and his family, in addition to the damage to quarantine protection. Occasional glimpses of their life are accordingly included. I have his permission to include this information.

Summary:

Bill Toomer was the Senior Quarantine and Grain Ships Inspector for Western Australia when he was demoted on disciplinary grounds for making false and unauthorised statement to the media. According to official reports he was an overzealous, egotistical and disobedient officer of such difficult character that he had to be transferred to Victoria "*in the public interest*" because he was unemployable in WA.

The reality is that his problems started in Victoria where his thoroughness of inspection, and refusal of bribes, resulted in unscheduled ship fumigations. The resultant delays incurred considerable costs to the ship owners, mostly influential overseas owners, and problems for their Australian agents. His wings were clipped before he was returned to Victoria.

An officer of one of the Victorian sub agents to James Patrick Stevedoring P/L testified under oath that he was told that Toomer would be sent to WA where he would be "*fixed up*". That is precisely what ensued !

The strength of authority's club culture is evident in its:

- a. survival of four conclusive findings in Mr Toomer's favour by:
 - i. the investigating Deputy Public Service Inspector (1973),
 - ii. a Promotions Appeal Committee (1979),
 - iii. the Administrative Appeals Tribunal (1991), and
 - iv. the Senate Select Committee on Unresolved Whistleblower Cases

- a. 33 year evasion of independent outside inquiry that was formally recommended by a Royal Commission; 24 year evasion of independent outside inquiry that was approved by Prime Minister Hawke, and 20 year evasion of settlement that was formally recommended to Prime Minister Hawke by Minister John Kerin.
- b. 36 year cover up at cost in excess of \$10m to Australian taxpayers and
- c. untold irreparable damage to quarantine protection of public health and rural resources.

The culture is backed by the Commonwealth's legal resources which are expert in denying hearing on the merits, and devising terms of reference that escape the point before them.

The 'Toomer Affair':

Mr Toomer joined the Victoria Division of Department of Health in 1968 at age 33. After intensive on-the-job training by Health's acknowledged expert, Denis Walsh MBE for Services to the Shipping Industry, he inspected ships at Geelong for export grain and quarantine purposes on behalf of the Departments of Primary Industry and Health. His thoroughness of inspection and refusal of bribes resulted in an increased frequency of unscheduled ship fumigations. Resultant delays created seriously expensive problems for influential overseas ship owners, and hence for their Australian agents.

A Geelong based officer of sub-agents to James Patrick Stevedoring P/L testified under oath that he was told by a senior member of James Patrick Stevedores P/L that Toomer would be transferred to Western Australia and "*fixed up*" over there.

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The prediction evidenced sound knowledge of the very different situation in WA vis-à-vis Victoria where the Quarantine Inspector controlled the ship inspection branch, and reported directly to Health's State Director.

In WA there had been just one ship fumigation in six years. The State Director had been demoted back to WA from a more senior post in Canberra. The ship inspection branch was controlled by the Assistant Director (Executive Services) who had no qualifications in quarantine. Inspection staff gas safety equipment had not been subject to the statutory tests. A gas mask fell apart under light finger tension. Morale of the inspectors was apathetic. Port authority and shipping agency staff, and ships crew treated them as a joke. The inspectors openly spent duty hours in hotels and on the beaches. The Quarantine Inspector had no authority. He had deceased a month or so after personally conducting the sole ship fumigation and failing to satisfactorily clear the deadly fumigant from the vessel.

Mr Toomer was advised to apply for the resultant vacancy. Health's Victorian administration recommended him enthusiastically. He took up duty at Fremantle in July 1972. The Department of Primary Industry designated him as the Senior Grain Ships Inspector for Western Australia, and encouraged him to ensure the same thoroughness of grain ship inspections as at Geelong.

Mrs Toomer was a theatre nurse. She and their four young children came with him. They purchased a large sized block of residential land in a developing outer suburb of Perth; took out a mortgage and built a substantial family home, mainly with their own labour.

Mr Toomer was never offered bribes in WA - there was no need. Everything was in place. The shippers needed only a little patience.

He trained the inspection staff and demonstrated care for their safety. Quarantine Medical Officers at Fremantle reported that he restored a sense of purpose. Ship fumigations resumed.

The following information, up to the point of Mr Toomer's removal from ship inspection, is derived from an official non-confidential history document:-

A Fremantle based grain shipping agency executive promptly complained to DPI of excessive and unnecessary ship fumigations, quoting their prior record. DPI routinely retained hard evidence of infestations and conditions of uncleanliness that justified fumigation. The complaint was dismissed. DPI executives subsequently visited the complainants in early 1973 to explain the necessity for compliance with DPI's prescribed inspection standards for grain exporting ships.

In February 1973 the Department of Health advertised the newly created position of Senior Quarantine Inspector, Western Australia in the Commonwealth Gazette. **The advertised location was Fremantle.** New office accommodation was duly prepared at Fremantle. Mr Toomer applied for the position.

On 10 May 1973 Mr C was recruited as Quarantine Inspector South West Ports. He was appointed against the recommendation of Mr Toomer and while Mr Toomer was absent on recreation leave. [Mr C was destined to take over as Quarantine Inspector, Fremantle from Mr Toomer.]

On 14 May 1973 Mr Toomer was promoted to the position of Senior Quarantine Inspector, Western Australia. **The location was now shown as Perth !** He was the Senior Quarantine & Grain Ships Inspector for WA on behalf of two departments.

By letter of 28 May 1973 Mr Toomer complained to Dr Mathieson against lay interference in his professional technical duties in relation to the vessel 'Cedarbank'. Mr Dienhoff, Assistant Director (Executive Services) had instructed him to withdraw a fumigation order against the vessel. Mr Toomer

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refused. Cedarbank was normally an export grain ship but was not scheduled to load grain on this occasion. The vessel was infested with rats and heavily infested with mice and had presented an invalid exemption certificate. The entirety of the Cedarbank incident suggests that it was part of the plan to "fix up" Mr Toomer.

On 28 May 1973 the Victorian Chamber of Shipping sent to the WA Chamber copy of a draft letter to DPI. The letter concerned [alleged] problems in Geelong and criticism by UK shipping interests regarding the application of export grain requirements to ships.

On 29 May 1973 Health's State Director, Dr Mathieson, and Mr Dienhoff, visited Mr Toomer at Fremantle. They made no mention of Cedarbank; accused him of incompetence in relation to two heavily infested Taiwanese fishing vessels, and refused his request to see the evidence of infestation for themselves. The vessels had been arrested by the RAN for

illegal fishing in Australian territorial waters and brought into Fremantle. The Navy and others had reported the infested state of the vessels.

Mr Tomer was instructed that in future the inspectors were to estimate numbers of rats on ships. Fumigation was not to be recommended for less than 20 rats estimated. If the number of rat bodies reported as recovered post-fumigation was much below the number estimated, the inspector's competence would be questioned. In the practical situation the vast majority of bodies would normally be inaccessible within the ship's structure. Furthermore, the inspectors had no control over the numbers reported. Ship fumigators frequently held contracts with ship owners to keep rodents to a practical minimum: their staff collected most of the accessible bodies.

The numerical practice was known to be unworkable. It had been recommended against by the World Health Organisation 25 years earlier, and subsequently dropped from Australian Quarantine Orders under recommendation by departmental experts.

Mr Toomer explained that the numerical practice was unworkable and unnecessary, and was other than the departmental and internationally accepted practice of assessing non-numerical levels of rodent infestation. He explained that nobody including himself could make usefully accurate numerical estimates, and that recovery of the bulk of rat bodies was impossible. His explanation fell on closed minds. He refused the instruction. **His former excellent reputation, family situation and career were consequently wrecked progressively.**

On 8 June 1973 Mr Toomer recommended Mr Dienhoff that Cedarbank's Master be prosecuted for failure to comply with the fumigation order. A further inspection at Bunbury by the Council's Health Surveyor confirmed the heavy infestation Cedarbank and it was agreed that Cedarbank would be fumigated on its return to Sydney. However, the Sydney inspectorate deemed fumigation unnecessary. The Master was not prosecuted.

On 11 June 1973 the recently recruited Mr C commenced duty as Acting Quarantine Inspector, Fremantle. He was completely untrained in the essential procedures, and Mr Toomer had little opportunity to train him.

On 3 July 1973 Dr Webb, Director of Health, Victoria, wrote to his WA counterpart, Dr Mathieson, providing a revised, and less favourable, assessment of Mr Toomer's performance at Geelong.

On 17 July 1973 Mr Toomer inspected the vessel 'Centaur'. He noticed that Dr Mathieson and Mr Dienhoff, were being entertained in the ship's saloon by the Captain and persons in business suits.

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On 18 July 1973 Mr Dercksen, Chairman, of the WA Chamber of Shipping, wrote to Dr Mathieson expressing the concern of Chamber members about changed attitude of Fremantle ship inspection staff. A meeting was set down for 10am on 30 July 1973.

On 19 July 1973 Dr Mathieson again accused Mr Toomer of technical incompetence, and instructed that no further fumigations for rodent infestations were to be issued without prior approval of Mr Dienhoff who would consult Dr Mathieson, and in their absence, the prior

approval of the Senior Clerk who would consult with the Assistant Director (Medical).

On Friday morning 30 July 1973 Mr Toomer was instructed that on Monday morning and thereafter he was to report for duty at the administrations Perth office.

On that same morning, Dr Mathieson and Mr Dienhoff met with Mr Kenneth Neil Patrick and Mr Thomas Christiaan Dercksen, representing the WA Chamber of Shipping.

Dr Mathieson told them that steps were in train to remove Mr Toomer from ship inspection duties, and that the activities of the Fremantle staff would be reviewed. Mr Dienhoff recorded an official file note of the meeting including Dr Mathieson's commitment. The file note was among voluminous documents released under FOI application more than ten years later. [Messrs Patrick and Dercksen later gave sworn evidence to a public service inquiry. Mr Dercksen's evidence was of a general nature. Mr Patrick's evidence re Mr Toomer was personal and vitriolic. Mr Toomer was not informed of their evidence.

Not lawfully empowered to interfere in Mr Toomer's official duties, Dr Mathieson transferred him to a city office in Perth under false accusation of incompetence in ship inspection. He had no telephone; was denied contact with subordinate staff other than Mr C, the untrained recruit who replaced him at the waterfront. **Ship fumigations in WA virtually ceased overnight.**

Mr Toomer was then a member of the Fourth Division Officers Association [FDOA] but had not complained to the Association. FDOA's apparently well informed General Secretary wrote to Health's Director General requesting inquiry and representation thereon. No such inquiry ensued. The FDOA administration subsequently split and one faction effectively abandoned Mr Toomer's cause. He then resigned from the FDOA and joined the Customs Officers Association.

The investigating Deputy Public Service Inspector rejected the accusation of incompetence and recommended review of ship inspection policy. Consequently, Health's Director-General repeatedly instructed Dr Mathieson to return Mr Toomer *"to the full normal duties of his position"*; eventually ensuring that his instructions were witnessed. His instructions were never complied with. Dr Mathieson was never disciplined for his serious disobedience.

Dr Mathieson's actions had compromised the Commonwealth beyond remedy. There could be no turning back ! Other means had to be found to honour his assurance to Messrs Patrick and Dercksen, and were. Part of the administration's retributive strategy was to marginalise Mr Toomer as a whistleblower, and punish him and his family with a view to inducing his resignation. Whistleblowers were generally regarded as traitors.

The administration's statement to the media allowed inference that Mr Toomer was an incompetent inspector. His request for permission to speak to the media was refused. His subsequent unauthorised statement to the media criticised the administration of quarantine in WA.

The Deputy Crown Solicitor personally and closely advised Dr Mathieson in the improper means that were employed to honour his commitment to Messrs Patrick and Dercksen. The DCS framed disciplinary charges on which Mr Toomer was dismissed for making false and unauthorised statements to the media. He appealed; acknowledged that his statement to the media was unauthorised, but denied any falsehood or

exaggeration. The Crown argued that what he said was false **because rodents arriving in**

Australia on ships from overseas ports no longer posed serious threat to public health or rural industry. Mr Toomer testified to the contrary. The Court refused to hear his expert witnesses.

The hearing of his appeal was public and widely reported in the media. Representatives of ship owners would have been closely interested in the evidence.

The same DCS team that advised and assisted Dr Mathieson was later castigated by Royal Commissioner Frank Costigan QC for its involvement in the infamous "Bottom of the Harbour" tax fraud. Ref: *'Wayward governance : illegality and its control in the public sector.'* P N Grabosky Canberra : Australian Institute of Criminology, 1989. ISBN 0 642 14605 5.

Parliamentarians from both sides solidly supported Mr Toomer's case.

The Magistrate reduced the penalty from dismissal to demotion. Dr Mathieson's administration demoted him to Quarantine Inspector, Port Hedland which had no involvement in grain ship inspection.

The Toomer family home in Perth was rented to tenants. Mrs Toomer and their four young children relocated to Port Hedland. Mrs Toomer suffered a physical complaint that was aggravated by the warmer climate. She obtained employment with the Port Hedland Hospital in a non-professional capacity. Meanwhile, the tenants seriously damaged their family home in Perth.

Meanwhile, DPI had ceased to employ Dept of Health quarantine staff in Western Australia and utilised instead the services of State Government ship inspectors.

The recommended review of ship inspection policy resulted in re-introduction of the obsolete unworkable numerical practice as a discretionary alternative to the departmental and internationally accepted practice of assessing non-numerical levels of rodent infestation. Under the obsolete policy there was no specific provision for the eradication of rodents other than rats. Many vessels were heavily infested with mice and rats. **Not surprisingly, ship fumigations for quarantine purposes dried up progressively across Australia.**

At Port Hedland Mr Toomer continued to be involved in quarantine ship inspections. Unable to find credible grounds to dismiss him, Dr Mathieson suspended him from duty under recommendation for retirement on mental health grounds.

The (Coombs) Royal Commission on Australian Government Administration subpoenaed relevant files. These were examined by Commissioner Paul Munro whose draft report sharply criticised the disciplinary and medical procedures involved. Mr Munro's final report was suppressed. The description published by the Commission was a bland version. However, the Commission formally recommended [no.181]independent outside inquiry to ensure justice for Mr Toomer. Prime Minister Fraser, and the Chairman of the Public Service Board, supported the recommendation **but no such inquiry ever eventuated.**

Under increasing public pressure, and nearly a year after Mr Toomer was suspended from duty, the Public Service Board belatedly granted independent medical examination. The doctor insisted on access to relevant files. His examination included reference for supplementary independent psycho diagnostic testing. His report cleared Mr Toomer's mental health unequivocally, and expressed his view that the initial examination was not for the examinee's benefit but an attempt to spare the Department further embarrassment.

Mr Toomer was returned to duty at Port Hedland. Departmental administrators plotted

unsuccessfully to frame him for charges of job incompetence in relation to a small vessel, the 'San Pedro Bay'; misuse of

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authority, and a damages action by the ship's owner. He spoke up to the media again alleging incompetent quarantine administration in WA, and was reduced in salary by two increments for this offence.

He was subsequently instructed to transfer to Victoria where an overclassified position of Quarantine Inspector, Melbourne Airport was being covertly created for him. He appealed against the transfer.

Instead of independent outside inquiry as recommended by the Royal Commission, there was a public service inquiry whose terms of reference concentrated on Mr Toomer and precluded consideration of quarantine policy that was pivotal to the central issue of his inspectorial competence.

The report was tabled in Parliament. It white washed at further expense to Mr Toomer's reputation and situation. It recommended that his appeal be disallowed; that he be transferred to Victoria in the public interest, and that his future duties should not involve ship inspection. The report contained no valid evidence in support of the latter recommendation: I have cause to believe that it was included at the department's request.

Mr Toomer took up duty at Melbourne Airport in 1977. He was barred from ship inspection while subordinate staff alternated between aircraft inspection and the comparatively more challenging task of ship inspection. The administration accused him of incompetence in aircraft inspection which caused delays to Qantas aircraft. The accusation proved to be unfounded.

Fol papers leave no reasonable doubt that medically qualified health administrators then deliberately targeted the ill and extremely stressed Mrs Toomer. She had remained in Perth with two of their four young children in a desperate attempt to maintain repayments on their family home. Unable to care for all four children, the other two were cared for by relatives in Wangaratta, Victoria, while her husband slept on the office floor in Victoria of financial necessity. Too sick to work in her profession of theatre nurse, Mrs Toomer earned income as a house cleaner. Her doctor wrote to the Department requesting that Mr Toomer be returned to WA in the interests of Mrs Toomer's health. Against her will, she was induced to be interviewed by Dr Mathieson's successor, under assurance that the purpose was to see if anything could be done to have her husband returned to Perth. There was absolutely NO chance that Mr Toomer would be returned to Perth. The Director's report of the interview is nauseating reading.

Mr Toomer's former position of Senior Quarantine Inspector for WA had remained factually vacant since his demotion in 1975. In 1978 Health provisionally promoted to it a Health Surveyor from Alice Springs and acknowledged internally that he did not possess the wide knowledge of, and experience in, quarantine procedures and techniques that was specifically called for in the official duty statement. Mr Toomer was one of four appellants. The other three were experienced Quarantine Inspectors and included Mr C. Mr Toomer was the only Victorian candidate. His appeal was heard by the Victoria Promotions Appeal Committee comprising the Senior Quarantine Inspector for Victoria, a representative of the Customs Officers Association, and myself as Chairman. I had not previously heard of Mr Toomer or his case. He requested to be advised of our assessment of his job competence. We concurred.

Promotions Appeal Committees were obligated by statute to make "*full enquiries*" into the candidates' claims to efficiency for the position in dispute. The Department's only comments re Mr Toomer were that he was not interviewed for the position because a public service inquiry did not believe that a satisfactory employment situation in the Australian Public Service in WA was available to him, and he was transferred to Victoria in the public interest. This puzzling advice commenced what turned out to be by far the longest and most searching inquiry in my nine years as full-time Chairman.

The department did not provide copy of the public service report. It was left to Mr Toomer to provide copy. It comprised an 18 page report plus an 86 page 'Sequence of Events', plus 10 Appendix comprising

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approximately 40 pages. He said that if given opportunity he would prove that the information therein was crucially defective.

It seemed likely that much of the information could have been checked by reference to the department's 'Personal' file on Mr Toomer. Asked whether he had any objection to the committee obtaining and examining his file, he replied that he would welcome this. The Personnel Officer agreed to send the file to the committee, but was forbidden by Health's Victorian hierarchy. The short cut was not available to us.

Over the ensuing weeks we spoke with the many officials who had worked with, and alongside Mr Toomer, until we had covered every relevant point in the public service report. Their unanimous view was that he was a natural leader of men and an excellent quarantine official. Our comprehensive report rated his 'efficiency' in highly favourable terms. We advised Mr Toomer accordingly, as per his request.

Our report comprised approximately 100 pages plus approximately 200 pages of attachments. While it was being typed the FDOA attempted to intervene adversely in the case. The attempt was unsuccessful. Authority's club culture makes for strange bedfellows !

All appeals were promptly and unanimously disallowed by the Central Promotions Appeal Committee in Canberra. No reasons were required or disclosed. The ban on his involvement in ship inspection remained intact.

The relevant Public Service Board Commissioner ignored my request for permission to travel to Canberra for the purpose of discussion with Health's Director-General with a view to resolving the situation.

Subordinate staff told Mr Toomer that a barley exporting ship at Geelong clearly warranted fumigation but the administration would not approve. He sought to bring matters to a head and made an unauthorised inspection of the vessel. This confirmed the reported level of rodent infestation and also uncovered previously overlooked evidence of live Khapra Beetle which poses a threat to the grain industry comparable to foot and mouth to the meat industry, and was further grounds for fumigation. The administration still refused. Following media publicity, the Barley Board became involved and the vessel was fumigated.

When formally reprimanding Mr Toomer for his unauthorised inspection the Victorian Director advised him orally that retirement on health grounds offered the "*only solution*". He accepted and was duly retired in 1980 on 60% physical grounds and 40% anxiety depression.

Meanwhile, I wrote to Prime Minister Hawke that Mr Toomer's case proved that the

Westminster system was not working in Australia. A person purporting to be his press secretary phoned me. I did not wish to speak with anyone connected with the media, and declined.

I heard only one further case. It happened to reflect the binding nature of the underlying obligation for loyalty required under authority's club culture.

An officer had appealed against the selection of another officer to act as Chairman PAC for a period of six weeks during the occupant's temporary absence. I knew both candidates at first hand. Had this been a promotion it would have been a tight contest. But it was not promotion. The criteria for temporary performance cases favoured the candidate who considered capable of giving best value over the anticipated period of the temporary performance. In this instance another committee member and myself considered that the appellant had a very clear advantage. Such an appeal would normally be determined to finality by the committee's majority recommendation. However, an abstruse technical aspect that was peculiar to this case required the Public Service Board to determine the appeal. It was the Board's policy to give priority to temporary performance appeals. On the last day of the temporary performance the relevant Board

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Commissioner had both candidates flown to Canberra for interview. He told them of the majority recommendation; determined in favour of the appellant, and asked if either knew when I intended to retire. Neither had any such inkling.

I was exhausted by the Toomer case and had applied for a months sick leave, but had not previously considered retirement. Suddenly I felt anxious about my future because I had spent the best part of two months on Mr Toomer's appeal, a job that would normally be completed in an hour or so, only to have his appeal promptly and unanimously disallowed by the Central Promotions Appeal Committee.

It was far too late to return to my previous employment as a professional engineer. I discussed the situation with my doctor. He recommended retirement. The Commonwealth Medical Officer promptly agreed. I was retired on medical grounds in 1980 at age 54.

A depressing aspect of authority's club culture is what it does to decent people. The Board Commissioner was a fair, likeable, and respected administrator.

In 1982, two years after Mr Toomer and myself were retired, a relevant "Insight" report was published in the Melbourne Age. He was promptly recalled for medical review which included psychiatric examination by a local doctor at Wangaratta. Reported fit to resume duty anywhere than in quarantine, he was refused re-employment. At age 47 this officer of formerly excellent reputation was permanently unemployable anywhere in the Australian Public Service.

I wrote to him and offered to assist his quest for independent outside inquiry. He accepted. We became friends and I became acquainted with his family.

Their marriage had disintegrated under the escalating pressure. He comprehensively restored their ageing house in Wangaratta for Mrs Toomer before he relocated to a bachelor/pro prospector existence on a small rural holding outside Wedderburn Victoria, beyond the electricity and water supply. He later met and married his second wife. They had two children. He built a novel adequate house into the side of a small hill, and developed a splendid garden. Their home became a visiting spot for a local tour company.

In 1982 Attorney-General Gareth Evans refused me permission to tell Bill's lawyers what I learned in the course of my statutory duties. I was not asked the nature of the information I wished to disclose.

In 1982/3 Bill's lawyers applied under FOI for relevant documents. Some were initially released for his viewing in Melbourne, under tight scrutiny and tight restriction on numbers allowed to be photo-copied. His lawyers eventually obtained release of hard copy. Examination revealed the existence of numerous further files some of which were released years later, and some that were never released.

In 1983 Bill mailed to each member of both houses of federal parliament a comprehensive report, "**Maladministration of the Australian Quarantine Service & Related Public Service Matters**" [ISBN10: 0959065008]. He supported parliamentarian Mel Bungey's request for a Royal Commission into quarantine administration; and requested legislation to protect public servants who spoke up against corruption and mismanagement. He also requested funds to pursue personal issues through the Courts. His essay possibly contributed to other pressures which culminated in subsequent transfer of responsibility for quarantine administration from Health to the Department of Primary Industry.

In 1984 former Minister for Health, Dr Doug Everingham' wrote tersely to Prime Minister Hawke that he (Everingham) was deliberately deceived by his Department, and requested action. Mr Hawke promptly approved outside inquiry by Mr Spigelman QC, but no such inquiry eventuated.

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Following a series of departmental and parliamentary inquiries into administration of quarantine, responsibility was transferred in approximately 1986/7 from the Dept of Health to to the Dept of Primary Industry.

Bill applied under Fol to DPI for amendment of Dr Mathieson's documents which attacked his competence, character and mental health. DPI refused, claiming that the documents were staff reports that did not relate to the applicant's 'personal affairs', and hence fell outside the FOI Act. He applied for review by the AAT.

DPI's Minister, The Hon John Kerin, requested DPI to attempt settlement. Extensive discussions and negotiation ensued in Canberra and Melbourne. Meanwhile, Bill had become a handicapped person in consequence of a domestic accident. Members of his family and myself assisted him throughout.

DPI requested Bill's detailed estimate of dollar losses. Its representatives emphasised that they were not interested in damage for pain and suffering. His tabled detailed estimate of \$920,000 was immediately ridiculed as "*unrealistic*". He offered to settle for around \$250,000, quoting the case of NSW police Sergeant Arantz as justification for whomever would have to authorise settlement. This was in **October 1988**. The DPI representatives instructed a long lunch break during which they happened to be seen entering the building occupied by the Victorian office of the Federal Attorney-General's Department. When the DPI representatives returned after lunch they announced that an inquiry might be more economic than first thought.

Bill requested the AAT to proceed with his appeal.

In December 1988 Mr Kerin wrote to Prime Minister Hawke recommending settlement and

against any further inquiry. Available Fol documents indicate that the matter was referred to two or three unnamed Cabinet Ministers who decided to ask the Ombudsman to conduct an informal inquiry. He predictably declined. A senior public servant briefed Mr Hawke on this development and suggested inquiry by the Merit Protection & Review Agency. The single page brief did not disclose that the Agency was not empowered to investigate in relation to former public servants, or that in this case the Agency was specifically prohibited from investigation because the central matters in issue were before the Administrative Appeals Tribunal. Mr Hawke initialled his 'OK' in the margin.

Bill told the Agency Director that he preferred independent outside inquiry, as recommended by the Royal Commission. The Director replied that his Minister had requested the inquiry. I commented that he was not obligated by law to comply. He said only that it would not be prudent for any public servant to refuse his Minister's lawful request, and went on to assure Bill that the Agency's inquiry would be fair and honest. He accepted in good faith, albeit with understandable reservations.

The Agency's budget initially allowed \$200,000 for the inquiry. Actual expenditure probably exceeded \$250,000 but was never disclosed. It proceeded in parallel with AAT hearings, thereby splitting Bill's limited resources. The Agency obtained files; compiled a comprehensive 210 page history from their tainted contents; drafted findings, and was then suspended to await the AAT's decision. The tone of the history document was neutral and identified several communications additional to those released under FOI. However, the draft did not address the central issue of Bill's job competence. His complaint to the Agency's Minister, Senator Peter Cook, was summarily dismissed. Bill then withdrew from the inquiry.

Senator Cook was never seen, then or subsequently, to disclose his pre-parliamentary involvement in the sensitive issue of Bill's mental health when he was Assistant Secretary to the West Australian Trades & Labour Council.

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The AAT sat for an aggregate 40 hearing days throughout 1989. Except for argument as to the meaning of 'personal affairs', the early days focussed mainly on the issue of ship inspection practice. This was central to the truth or otherwise of the accusations that Bill was an incompetent ship inspector. Bill presented the retired Mr Walsh and Mr Walsh's successor as expert witnesses against the numerical practice. DPI said it would present two expert departmental witnesses who would say that they had applied the practice satisfactorily. The first had been trained by Mr Walsh who remained in Court as a spectator. The second was trained by Bill. Both of the Department's expert witnesses rejected the numerical practice unequivocally. [During the subsequent AAT costs hearing in 1992, DPI's Quarantine Barrier Executive testified that he had several times recommended unsuccessfully against the numerical practice and that it should be dropped altogether.]

In response to DPI's claim that the documents did not relate to his personal affairs. Mrs Toomer sought to explain how the documents contributed to the break up of their marriage, but became too distressed and was excused. Bill's son Phillip conducted a comprehensive lay search for precedents which successfully countered the Commonwealth's precedents.

The AAT's decision issued on 12 April 1990 [Ref: WF Toomer and Department of Primary Industries and Energy [1990] AATA 85 (12 April 1990)] The Tribunal found that the information contained in Dr Mathieson's documents was incomplete, incorrect, out of date and misleading in the respects set out in its reasons for decision. Properly considered, the documents provided no evidence on

which it could be found that Mr Toomer was incompetent or overzealous in any aspect of his duties. The Tribunal was satisfied that the attack on his professional reputation was not justified.

The Crown appealed against nearly every facet of the Tribunal's decision but subsequently withdrew about the same time that the Merit Protection & Review Agency resumed its inquiry. The Agency published its unsigned 339 report and 210 page 'history' attachment in 1991. The report quoted legislation which purported to empower Dr Mathieson as State Director to direct the application of whichever ship inspection practice he preferred; found that Bill's competence was not relevant; that by his behaviour he was the architect of his own misfortunes; recommended against compensation and the his case be considered closed. Senator Cook promptly issued a media release announcing his acceptance of the report and its recommendations.

Up to this point Bill's second wife was actively and helpfully supportive of his case. Their marriage disintegrated thereafter. His wife and their two children relocated to live near her mother in Queensland.

Lawyers acting pro bono for Bill applied for compensation on the basis of the AAT's findings. This was refused on the ground of time limitations, it being argued that Bill had known the facts all along.

In 1994 his lawyers filed in the High Court a damages claim against the Commonwealth alleging conspiracy, misfeasance in public office and negligence. In 1997 the claim was remitted to the Federal Court which struck out the claim on the grounds that it;

- (a) did not disclose a reasonable cause of action;
- (b) may prejudice, embarrass or delay the fair trial of the proceedings;
- (c) is otherwise an abuse of the process of the Court.

Leave was granted to submit an amended statement of claims. It was struck out and leave granted to submit a further amended claim. His lawyers referred the matter to a barrister who advised that it would probably prove impossible to compile an acceptable statement of claim for conspiracy (the way to negate time limitations). Bill then withdrew the action.

Bill's case was amongst those considered in 1994/5 by successive Senate Select Committees on Public Interest Whistleblowing. They heard evidence from four representatives of the Merit Protection and Review Agency including the head of its inquiry re Bill, who subsequently became Merit Protection

Commissioner. The Committees also heard evidence from Bill and myself and expressed preference for the AAT's findings against the Agency's findings. In his tabling statement the Chairman of the Unresolved Whistleblower Cases Committee recommended compensation for Bill and apology. His recommendation was ignored.

Bill's application for voluntary compensation via an ex gratia payment was refused by the Howard Government, essentially on the basis of the Agency's report. A different solicitor acting pro bono on Bill's behalf applied for review under the Administrative Decisions (Judicial Review) Act on several grounds, including that the decision was based on false and misleading information, and could not have been reasonably reached by a reasonable person. The Federal Court disallowed the application. **It found that the Minister was**

lawfully empowered to act on whosever advice he preferred, and that providing he did so lawfully his decision could not be impugned. [Toomer v Slipper [2001] FCA 981 (26 July 2001)]

Continuing research of the voluminous FOI documents subsequently disclosed that in 1975 Dr Mathieson had denied under Oath his assurance to Messrs Patrick and Dercksen that Bill was being removed from involvement. Copy of transcript, and the official file note of Dr Mathieson's assurance, was forwarded to Attorney-General Phillip Ruddock. He was requested to refer this material for opinion by independent outside counsel as to whether it constituted evidence of perjury. Mr Ruddock instead forwarded the material to the Australian Federal Police for investigation. They refused because Dr Mathieson was no longer alive. Mr Ruddock informed Bill of regret that he was unable to help.

Bill now lives an itinerant neo-hermit existence.

His solicitors had never suggested an application under work cover for damage to his health. FOI papers released in approximately 2006 revealed that departmental officers had deliberately kept this right from him. Last year he applied via DPI for compensation under occupational safety and health legislation for damage to his health.. DPI noted the extensive number of relevant files and decided to "*fast track*" the application. Bill was referred for psychiatric examination in Melbourne. Examinees are invited to have a relative or friend with them during the examination. Bill asked if I would go with him because of my knowledge of his case and calming effect. I agreed: he duly notified the Work Cover authority. The examining doctor emphasised loudly so that I could hear that he would see Bill alone. Upon emerging from the 40 minute examination he said loudly to Bill, "*I think I've got all the issues.*" The psychiatrist had denied opportunity to hear my evidence as to the real cause of the long and unresolved conflict, and my observations as a friend as to the change in Bill's personality. He reported no evidence now or previously of mental illness or damage to Bill's health. Compensation was accordingly refused. The decision ignores the majority view that prolonged victimisation and frustration generally damages health.

The 1991 report of the Merit Protection & Review Agency sought to damage my credibility by noting that I was the principal beneficiary of some \$32,000 in costs awarded against the Commonwealth by the AAT in Bill's case. [In fact it cost me more than that.] Bill had insisted at the outset that I should tender invoices and claim costs. I have absolutely no material interest in justice for Bill or his family. My assistance to him is entirely without any form of material reward or promise.

The inherent destructiveness of authority's club culture is, in my perception, further reflected in abandonment of the de novo merit based Promotions Appeal Committee system which had served the Australian Public Service effectively from 1922 until 1984. It was well accepted by management and staff, and usually got the right answer, Bill Toomer's case being one of the glaring exceptions.

In 1984, (four years after the retirements of Bill and myself) the Australian Government created a Merit Protection Commissioner and the Merit Protection and Review Agency. The ostensible purpose of these authorities was to improve efficiency of the Australian Public Service. Whilst having no experience with

the new system, it seems from publicly available information that this centralisation of power has probably achieved the opposite.

The statutory definition of "*efficiency*" in the old system was : "*special qualifications and*

aptitude for the discharge of the duties of the office to be filled, together with merit, diligence and good conduct". This precise definition was abandoned and replaced by a simple but comparatively vague formula which, according to an official public document, seeks the officer *"who can do the job most successfully"*.

The new formula does not appear to ensure that the intangible qualities of for merit, diligence and good conduct are taken into account in a career service.

Whereas Promotions Appeal Committees determined appeals on a de novo merit basis, the Promotions Review Committees appear to be limited to judicial review of whether the procedures of Approved Selection Committees were lawful. .

The PAC's had a broader base. They comprised a departmental nominee, a staff association nominee, and an independent chairman nominated by the Public Service Board. The departmental nominee normally explained the requirements of the subject position additional to what could be gleaned from the official duty statement. The staff organisation nominee was elected by members of the relevant staff organisation.

The PRC's comprise a "Convenor" nominated by the Merit Protection Commissioner, a member nominated by the department, and a member nominated by the Merit Protection Commissioner. Both of the Commissioner's nominees are ostensibly trained or experienced in staff selection.

The new system also reduced the range of positions subject to review.

As I see it, the Commonwealth has swapped a proven truly merit based appeals system for a legalistic system from which the only provision for further appeal is to the Federal Court under the Administrative Decisions (Judicial Review) Act which makes no provision for review of the merits.

What I have witnessed over the past 30 years points to the accuracy of Royal Commissioner Athol Moffitt's prediction. It is at page 22 of a book given to me by Bill Toomer:

"There appears to be a very great danger that organised crime will infiltrate this country in a substantial fashion. If it does, there will be little appearance of its arrival and it will be difficult and probably impossible to eradicate it. Its arrival is unlikely to be signalled by the arrival or activity of armed gangsters with black shirts and white ties. More likely it will arrive within the Trojan horse of legitimate business, fashioned for concealment and apparent respectability by the witting or unwitting aid of expert accountants, lawyers and businessmen."

[Moffitt's book was published in 1985 - 'A QUARTER TO MIDNIGHT - THE AUSTRALIAN CRISIS: Organised Crime and the Decline of Institutions of State.' .]

In 1974 Commissioner Moffitt conducted Australia's first inquiry into organised crime. His inquiry concerned NSW clubs. It was followed by a succession of Royal Commissions into organised crime in Australia, the last being the Costigan Commission in 1984. Mr Costigan's Commission was shut down suddenly after a leaked document indicated that he had Mr Kerry Packer in his sights as a drug king-pin.

Moffitt's warning was not heeded. ***"Where there is no vision, the people perish."*** King Solomon n

Keith Potter 28 July 2008