

The Hon. Brendan O'Connor MP
Minister for Home Affairs
Parliament House
Canberra ACT 2600

Dear Minister,

RE: Allan Kessing

I am writing in relation to my application for a pardon of my conviction under the Royal Prerogative of Mercy.

In support of my application for a pardon I will address the comments of the Commonwealth Department of Public Prosecution in their letter dated 17 May 2010, which they believe go to the 'establishment' of my guilt:

"Mr Kessing was a former Australian Customs Service ("ACS") officer and had worked in the Air Border Security ("ABS") Team at Kingsford Smith Airport"

The content of this statement is correct.

"Mr Kessing was a member of that team when each of the subject reports was prepared"

The content of this statement is correct.

"Mr Kessing had worked on each of the reports during their compilation"

The content of this statement is correct.

"Mr Kessing received, or had access to, copies of both reports for reading and review both during and after their compilations"

The content of this statement is correct.

However, I maintain that the facts stated in the above four comments of the CDPP when considered alone or combined do not establish my guilt beyond a reasonable doubt.

Further, the CDPP claim:

"Copies of the subject reports were found in Mr Kessing's residences during the execution of search warrants on 6 September 2005."

The abovementioned search of my residence was conducted in my absence and on a faulty search warrant. The Crown confirmed that the warrant was faulty at the first Magistrate's hearing in October 2005.

"Mr Kessing resigned from the ACS on 10 May 2005. The articles in *The Australian* were published on 31 May 2005, three weeks later."

The above mentioned dates are correct. However, I maintain that the three week period between my resignation and the publishing of the article in *The Australian* does not establish guilt.

"Mr Kessing was a 'disgruntled employee' of the ACS and therefore had a motive to seek to embarrass the ACS or to publicly expose what he perceived as the ACS's inaction regarding the subject matter of the reports by leaking the reports to the media"

I maintain that I was never a "disgruntled" employee. It was the love of my job that kept me working longer than necessary to complete the report. I deny that I ever possessed the motive to publicly embarrass the ACS.

"The journalist, Mr Martin Chulov's business card was found during the search at Mr Kessing's mother's house. The card was found on the floor of the same room in which the Threat Assessment Report, had been located."

I obtained Mr Chulov's business card after the article in *The Australian* was published. Therefore the fact that his business card and the Threat Assessment Report were in the same room in my mother's house is inconsequential, as the business card would have been placed there after the article in *The Australian* was published.

"A notepad with the mobile telephone number and e-mail address for Mr Chulov written on it was located during the search at Mr Kessing's home."

I wrote down Mr Chulov's details during a phone conversation with a person in the newsroom who did not identify themselves but who gave me Mr Chulov's details. That I had his details on a notepad does not prove that I sent the report to him. Furthermore, he was already in possession of the report by the time I obtained his details.

"Telephone calls had been made from Mr Kessing's home telephone to telephone numbers at *The Australian* on at least six occasions between 23 and 28 May 2005, including calls to Mr Chulov's direct number."

I draw the CDDP's attention to the fact that records show these calls were made to the News Ltd switchboard, which services *The Daily Telegraph*. My mother used to call *The Sunday Telegraph* to obtain the various medals and tokens offered by them, a collection of which I found at her house.

"Telephone calls had been made from Mr Kessing's mother's home telephone to a telephone number at *The Australian* on 28 March 2005."

The indictment was specifically that "information was passed in two weeks in May". I dispute the relevancy of this phone call as it does not relate to the time period stated in the indictment. It can also be shown that I was not present at my mother's house on 28 March 2005. Furthermore my mother was in possession of several tokens that were on offer in March by *The Sunday Telegraph* which she would have obtained by telephoning them.

"A telephone call had been made from a public telephone on 30 May 2005 to Chulov's mobile telephone number, being the telephone number recorded on the notepad found in Mr Kessing's home and on the business card for Mr Chulov that was found at Mr Kessing's mother's house. The public telephone is located approximately 70 metres from his mother's home."

I did not make any such telephone call from a public telephone. I believe that a telephone call made by persons unknown prior to the publication of *The Australian* article has no relevance to the indictment whatsoever. Furthermore, I object to the CDPP using a telephone call made by persons unknown as a point to establish guilt.

In addition to my responses to the CDPP's statements, I respectfully draw to your attention to the following:

I note that the CDPP on 19 November 2010 declared that prosecution in the OzCar affair was not in the public interest. The contrast with my case could not be more stark.

In the OzCar affair there were known, and named, participants, a full admission by the principal, uncontested facts and indisputable evidence of the forged email. The motive was highly partisan, and egregious in nature, as well as damaging to Australian politics and community confidence in general.

The CDPP chose to prosecute my case even though it was against the public interest. The outcome of the report being made public was entirely to the benefit of the nation as was shown by the Wheeler Report findings.

The CDPP could not present a motive other than "disgruntlement", no admissions were made and I was never formally questioned. The Crown had compiled contradictory, exculpatory evidence in the original Brief of Evidence presented at the magistrate's trial, none of which was presented at trial. The evidence presented was scant and entirely circumstantial as acknowledged by both the Crown, and trial judge.

To conclude, the request for a pardon is the last option open to me to seek legal redress in this matter, one which I have already incurred great emotional and financial costs defending.

I await your response to my application for a pardon of my conviction under the Royal Prerogative of Mercy.

Yours sincerely,

Allan Kessing