

13 December 2013

Mr Richard Ackland
[REDACTED]

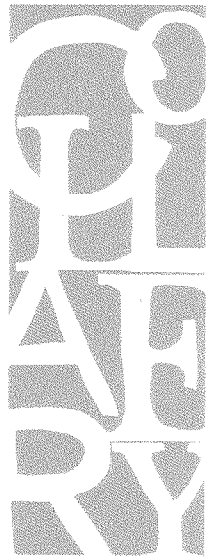
Dear Mr Ackland,

RE: Timor-Leste v Australia

I have resolved to make certain revelations which, I hope, will balance the public interest in the current issue affecting Timor-Leste, a former ASIS officer and myself.

For many years I have acted for past and serving ASIS staff who have had a grievance, a disciplinary matter or an issue in which they need independent legal advice. The process by which ASIS staff may ventilate a grievance, defend an issue or handle a legal matter in which they are involved includes securing an authorisation to speak to an approved private lawyer.

In relation to the current witness, I can now reveal that he was authorised in writing by the Inspector-General of Intelligence and Security on 6 March 2008 to seek private legal advice. A further letter dated 2 April 2008 to him specifically acknowledged that the witness had consulted myself. We are holding that correspondence but I am not free to release it. The instructions given to me by the witness raised matters of grave and unprecedented concern.



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During the ASIO search of my main office safe on 3 December 2013, sensitive file papers relating to other ASIS personnel were not seized. Nor were the file papers relating to other matters including, for example, an Australian Special Forces military person whose complaint regarding Special Force operations in Afghanistan is extremely sensitive. I conclude from this that there is no real belief that I am a risk to national security, and nor should I be.

In 2004 shortly after Mr Downer approved the transfer of Mr David Irvine from the diplomatic stream of the Department of Foreign Affairs and Trade (DFAT) to ASIS as Director-General, the witness was personally directed by Mr Irvine to plan and effect a mission for his team in Timor-Leste whereby the internal deliberations of a Timor-Leste negotiation team were to be clandestinely monitored.

This task of a startling new dimension diverted ASIS resources away from a proper defence, security and national interest function. For long-serving staff this was not an in-house dispute about intelligence priorities under section 6 of the *Intelligence Services Act 2001*. This was about law breaking.

After the controversial operation in Timor-Leste, all three senior positions in an area in ASIS relevant to the mission were removed either by means of human resources tactics, constructive dismissal or retirement on health grounds. The explanation given to the long-serving witness was the need for 'generational change.' Hence, the witness' grievance concerned the "change" at ASIS.

In authorising me to advise the witness, the then Inspector-General of Intelligence and Security, Mr Ian Carnell, could not have been unaware of my

longstanding advocacy for Timor-Leste and close involvement with its leadership. The allegation that a Cabinet Minister and Director-General of ASIS, already close confidantes, would use ASIS to negotiate fraudulently a revenue sharing contract with a commercial joint venture partner, in which the interests of a prominent Australian corporation were directly involved, was startling. It was a disclosure that shocked me.

Before an allegation of law-breaking could be advanced, it required corroborative research. A lengthy and painstaking enquiry commenced within my office. The enquiry corroborated much of the witness' allegations. Extensive research was required because the witness quite properly did not, and nor was he asked, to provide the names of any officers at ASIS involved in the enterprise beyond Mr Irvine. Of course, I would know names at ASIS but none of my past or present clients were implicated.

The nature of the evidence to be presented included matching the eavesdropping exercise with the cooperative work of Woodside Petroleum and then Foreign Minister Alexander Downer (see Paul Cleary's *Shakedown*). Commercial fraud cases are notoriously difficult to investigate and this was no exception.

The unprecedented challenge we faced was a situation where both mainstream political parties were collaborating with the major Australian corporate identity. We needed to find an appropriate forum where Australia's national interests could be protected whilst the interest of my then client, the witness, and my pre-existing client, Timor-Leste, could be properly advanced without conflict of interest.

The witness wanted a remedy for the loss of his career and Timor-Leste likewise required a remedy. Advice was sought from Sir Elihu Lauterpacht CBE QC LLD and Professor Lowe QC on the breaches of international law.

It was also concluded that the evidence of the conspiracy to defraud Timor-Leste – a common law crime - would also support proceedings before an arbitral tribunal to be established under the Timor Sea Treaty 2002. The Certain Maritime Arrangements in the Timor Sea (CMATS) Treaty involved no compulsory arbitration clause and the effect of the CMATS Treaty substituting a new article into the 2002 Timor Sea Treaty, (Article 22) meant that a challenge to the validity of Article 22 would lead automatically to a consideration of the validity of the CMATS Treaty.

The rules of the Permanent Court of Arbitration (PCA) at The Hague provide adequate protection for the confidentiality of matters of national security affecting Australia or Timor-Leste. Above all, such a tribunal would and should elicit the evidence that would provide the basis for a reference of the proceedings to the Australian Federal Police, the Commonwealth Director of Public Prosecutions and the Timor-Leste Prosecutor-General.

Knowing of the establishment of remote switching listening device eavesdropping capacity in the private Cabinet offices of the then Prime Minister Dr Mari Alkatiri from July 2004, it was possible to correlate events. Evidently, Dr Alkatiri would prepare his position with his advisers and that position could be eavesdropped on. Just one example relates to 13 September 2004, on which date senior officials from DFAT arrived in Dili to discuss the agenda issues for a negotiation meeting scheduled for 26 September 2004 in Canberra. Arriving quietly the same day for talks by private jet was then Woodside Chairman, Mr Voelte, Mr Gary Gray and other Woodside officials.

Research revealed extensive close contact, exchange of staff and tactical appreciations between Mr Downer and Woodside.

When the Brief of Evidence that would vindicate the witness' grievance and support the invalidity of the corruptly procured Treaty was ready it appeared that Australia had a real chance of UN Security Council membership. Prime Minister Gusmao resolved not to undermine Australia's chances and the Brief was held for many months until after the Security Council vote was taken on 18 October 2012.

Finally, Prime Minister Gusmao had his Foreign Minister personally deliver a letter to Prime Minister Gillard on 7 September 2012 informing her that he regarded the CMATS Treaty invalid by way of the clandestine eavesdropping at that meeting. Ms Gillard agreed that the matters should remain out of the public eye. Attached to that letter was an Aide Memoire prepared by Counsel setting out the claimed facts and the law.

Ms Gillard replied formally that she did not accept the Timor-Leste position. She appointed Margaret Twomey as her Special Envoy to see Prime Minister Gusmao. Ms Twomey was Australian Ambassador in Dili during the events complained of. Despite this, she was received by Prime Minister Gusmao but had no suggestions to make other than that Australia and Timor-Leste should remain friends, a matter of common ground but not going to the substance of the complaint.

Eventually the parties met at Bangkok in February 2013 but no progress was made. Australia refused to 'comment or negotiate' pursuant to Article 23 of the Timor Sea Treaty, no doubt seeking to prevent time running under the

Article for the issue of an Arbitration Notice. Timor-Leste served a Notice of Arbitration on 23 April 2013.

In an extraordinary demarche on 3 May 2013, Foreign Minister Bob Carr and Attorney-General Mark Dreyfus revealed that Timor-Leste was complaining of old rumours of “espionage.” But the Australian Government knew by Aide Memoire the facts alleged. The Timor-Leste leadership was stunned. Despite his knowledge of the eavesdropping operation, Alexander Downer chimed in to state that Prime Minister Gusmao was relying of old allegations of espionage. If Messrs Carr, Dreyfus and Downer hoped to undermine the Timor-Leste leadership’s confidence in the case, they did not succeed.

The matter is now before the PCA. Throughout this exercise, my office has acted with complete propriety in not disclosing the names of any ASIS officer (with the exception of the witness whose Affidavit is deposited at the PCA).

There has never been a risk to national security associated with the revelation of a criminal conspiracy to defraud Timor-Leste. The witness’ statement was to be lodged at the PCA within days of the raid on my office. Mr Irvine obtained a search warrant, not from a judicial officer, but from Mr Downer’s Coalition colleague, Senator Brandis. This has resulted in the perusal and seizure of documents concerning my advices to Timor-Leste leadership over more than twenty years, long before these allegations arose. The raid was reprehensible and a gross breach of legal professional privilege and of the sovereign rights of Timor-Leste.

During the raid other officers carrying ladders and tool kits entered the roof spaces and were overheard remarking “Got it.” Other officers removed

something from my kitchen. One concludes that ASIO had placed listening devices in my law office.

Timor-Leste and Australia are allies – Timor-Leste is not an enemy state and nor is it in any way an economic adversary. There was no justification for the criminal acts perpetrated to bring about a favourable negotiation base for Australia on the CMATS Treaty. The real issue for investigation is the conduct of Mr Downer and his confidant Mr Irvine in 2004, and, now in terms of the action taken under the terrorist legislation to raid my office and seize documents.

Democracy is founded on the rule of law. A brave and good Australian lost his job. He came forward to reveal properly without risk to national security a crime of the stunning proportion perpetrated on Timor-Leste. Indeed, Commonwealth officers have an obligation to reveal crime and a lawyer, after due, proper and prudent enquiries has an obligation to pursue the interests of his client and any other client that may have common interest. I made initial proposals to protect the witness abroad but he stayed in Australia. He intends to assert both his innocence of the allegation of criminal disclosure and to give evidence of the fraudulent conduct.

Senator Brandis misled the Parliament in alleging, when he knew or should have known by simple index check that the witness came forward with his grievance against the ‘generational change’ at ASIS. What else could the government expect me to do – hide the crime? The correct processes that should now follow given the revelations is for there to be an adequate investigation of this matter by the Australian Federal Police and the Commonwealth Director of Public Prosecutions so that the full dimension of the misuse of ASIS can be measured. Mr Irvine should be stood down

immediately. We all know now that Ms Gillard gave up an election winning opportunity, and, Mr Abbott has backed the forces of darkness. What is the grip on our Parliament?

There is no question as to my integrity regarding the preservation of Australia's intelligence secrets of which I have been a significant repository for many years. The manner in which DFAT has secured its long cherished ambition of delving into my advising to Timor-Leste is disgusting.

I understand that Alexander Downer has made representations in recent weeks in Canberra since the revelations were made for the matter to be shut down. Any such recent contact with Mr Irvine, his cohort in 2004, must be the subject of investigation. Senator Brandis should state whether he has had recent contact with his long-time associate Mr Downer concerning this issue. Mr Irvine's motive to secure a warrant from a Liberal-Coalition politician and use terrorist laws to raid my law office must be investigated. Seizing old files which should form the basis of my memoirs, relating to old wounds between the leadership in Timor-Leste is an unbelievable provocation to the people of Timor-Leste. Seizing this legal advice was pure bastardry. The raid on my office was crass, hand-fisted, intimidatory and redolent of a police state.

Unless the fraudulent conduct is dealt with in Australia according to law it may be dealt with according to the law on the other side of the Timor Sea where the Prosecutor-General, if armed with full Briefs of Evidence from my London office may issue indictments and refer them to Interpol where Timor-Leste has full standing. If this occurs, certain persons may begin to realise the enormity of their actions and the fact that they cannot and will not escape scrutiny. If I transfer my full brief to the Prosecutor-General of Timor-Leste, Prime Minister Abbott can and will count the consequences. I have taken

great care to ensure the least possible provocation arises in Timor-Leste over this disgraceful period in Australian political history.

Cool heads should prevail. Respective Directors of Prosecution should investigate the alleged conspiracy to defraud Timor-Leste, and coordinate to ensure both the protection of those that acted only under orders and that prime movers answer to justice without delay. The raid on my home was an attempted Liberal Coalition cover-up of an issue that may lead to a much fuller disclosure of the misuse of ASIS by the Coalition whilst in government. The ALP caught up in this Woodside imbroglio offers no recourse either to the victims. This case will proceed at The Hague.

Finally, as distinct from what was perused and copied, here is a list provided by ASIO of the documents seized on 3 December 2013:

- *Document entitled Memorandum re: the 2006 CMATS dated 17 February 2012;*
- *Document titled Memorandum to Counsel;*
- *Document entitled Timor Sea Treaty, Dili 20 May 2002;*
- *Document titled Challenging the validity of the certain Maritime arrangements in the Timor Sea Treaty (23 pages);*
- *Apple iPhone white in colour bearing FCCID: BCG-E2430A with black iLuv cover;*
- *ACER Aspire Laptop black, bearing S/N 11600300725 and power supply;*
- *4GB USB Verbatim thumb drive, black in colour, NG04G2513008819 DML;*

- Document titled *"Correspondence to Lowe QC re: Timor Sea Maritime boundary issues in folder labelled 1 June 2010 to 27 October 2011;*
- Folder labelled ICT product containing document titled *"Protocol for the operation of base stations."*
- Document titled *"Correspondence to Professor Lowe re Australia - East Timor treaty in folder labelled 1 June 2010 to 27 October 2011;*
- Brief to Counsel [Bernard Gross QC] re: *Timor-Leste v Australia* dated 19 November 2013 (3 pages);
- Documents: Affidavit of **** [Witness K], related itineraries, diplomatic courier document and photo of sign saying *Welcome to Central Maritime Hotel Dili;*
- Seven letters of varying stages of draft addressed to Ambassador Joaquim AML da Fonseca from B Collaery dated 20 November 2013.
- Document titled *"Correspondence with Professor Lowe re: Australia - East Timor treaty"* stamped copy sent, in folder labelled 1 June 2010 to 27 October 2011.
- Document titled *Negotiations in London* dated 28 November 2012 and addressed to the Office of the Prime Minister, Government of Timor-Leste;
- Document: Letter to Prime Minister re: *Dispute with Australia* labelled 13 March 2013 to 23 April 2013;
- Document: Letter to Prime Minister re: *Dispute with Australia* in folder labelled 13 March 2013 to 23 April 2013; and
- Untitled document with hand written comments stating *This is the statement of **** [Witness K].*

The folder for the protocol concerning base stations relates to a start-up IT company I chaired some ten years ago relating to a proposal to place RFID (radio-frequency tags) in Airline Boarding Passes so that base stations throughout an airport can locate passengers. I demonstrated this technology personally at Canberra Airport to Attorney-General and former classmate, Phil Ruddock, some years ago. This I assume is the seized 'electronic intelligence' Mr Irvine used in his 'back grounding' tactics to the gullible.

Back to ASIS: The "generational change" sought by Mr Irvine soon manifested itself in a loss of leadership and poor field craft. Timor-Leste was not a particularly safe place in 2004 when parts of this operation took place when the witness was on leave.

The extreme naivety of using ASIS agents travelling and staying together and leaving other indicia were functional flaws of an organisation headed by an amateur and re-staffed with more compliant officers.

In 1999, conscious of joint national security implications, I assisted ASIS in setting up contact at leadership level within the Timorese Resistance, anticipating that Australia and Timor-Leste would be allies post-independence with a clear need to coordinate matters of mutual concern. The 2004 operation was a gross betrayal of the trust that I had tried to engender in Dili for effective intelligence exchange on matters of mutual concern including, ironically, transnational crime.

In an interview reported in *The Australia* on 28 May 2013 I made clear that the complaints by Timor-Leste were not aimed at "beating ASIS over the head." We were still hoping that sense would prevail and the issues could be debated as planned by Timor-Leste behind closed doors. The actions of Mr

Irvine as Director-General of ASIO have needlessly inflamed the situation and will now place the focus on ASIS and himself. He has himself to blame for this.

Speaking as a former Attorney-General, I say that Senator Brandis' comments about the witness and myself implying that we are both criminals was imprudent. One must question how much of what I am telling now has been revealed by Mr Irvine. It is important that all who are being background briefed by Senator Brandis and David Irvine should be aware that I am constrained in saying anymore. They should exercise extreme caution in accepting the truth of further briefings.

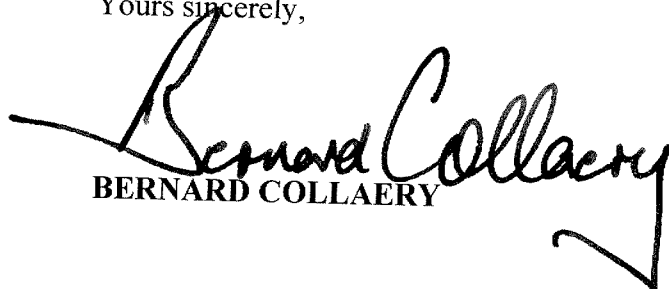
Likewise, I commend to my legal colleagues in government and to the investigators at large a sense of placing what they see in perspective. There has been no threat to national security. Throughout the exercise, only the witness' description of the event has been revealed. While it may have been wrong to divert ASIS resources and assets (as ex-Premier Steve Bracks has said) to assist Woodside shareholders, the real issue is that breaches of law were involved. There was no national energy imperative in securing the minuscule by comparison, gas deposits of a Greater Sunrise. Deferring the maritime boundary issue for fifty years was never going to work with a newly emerging government and a change of government in Timor. The CMATS Treaty sewed the seeds of instability rather than stability. The operation was inconsistent with Australia's long-term interests of having a stable and prosperous Timor-Leste – an unsinkable aircraft carrier closer to Australia's sea-lanes.

There is a gulf as deep as the Timor Trough between DFAT and the Australian Department of Defence on issues relevant to Timor-Leste. The

2004 cheating demonstrates all that is wrong and disingenuous with the Australian Department of Foreign Affairs compared with the hard-headed and enormously fruitful relationship at defence level between Timor-Leste and Australia. The operation was a very dangerous mission – physically dangerous with the chance of compromise. If further ventilated, there will be other evidence of how close the operation came to disaster at a time when violence towards innocent Australians could have been a real prospect in Dili.

My legal and ethical duty throughout has been to find a way to redress my client's legitimate grievance, and, to prevent further criminality. Unfortunately, with both Coalition and Labor compromised a remedy had to be found abroad. When rule of law returns to the Australian Cabinet the issue may return to Australia for adjudication.

Yours sincerely,


BERNARD COLLAERY

Public statement by the Inspector-General of Intelligence and Security

The Office of the Inspector-General of Intelligence and Security does not usually comment or provide information on particular approaches made to it. Matters raised with the office are usually confidential, and often are concerned with national security. Further, to breach the confidence of individual complainants could deter others from raising important concerns with the office.

The *Inspector-General of Security Act 1986* requires that inquiries be conducted in private. There are also strict secrecy provisions.

In light of recent media reporting I would like to confirm that, to the best of my knowledge, no current or former ASIS officer has raised concerns with this office about any alleged Australian Government activity with respect to East Timor since my appointment in April 2010.

I have spoken to my predecessor and he has confirmed that, to the best of his recollection, no current or former ASIS officer raised concerns with this office about any alleged Australian Government activity with respect to East Timor during his term as IGIS and he had no discussion with any former or current ASIS officer about any such concerns.

The practice of this office is to make detailed records of any concerns raised with it, whether the concerns are raised in writing or orally, and regardless of whether the concerns are in jurisdiction or followed up. A search of our records since 2004 has revealed no record of any former or current ASIS officer having raised concerns with us about alleged Australian Government activity in East Timor.

Where I decide not to inquire into, or not to inquire further into, a matter to which a complaint relates in respect of action taken by an intelligence agency, I am required to inform the responsible Minister and head of the agency accordingly. I have reviewed those advices provided to the Minister for Foreign Affairs in respect of complaints made about ASIS since 2004 and can confirm that there are no references to complaints made about alleged Australian Government activities in East Timor.