

"All that is needed for evil to prosper is for people of good will to do nothing"—Edmund Burke

The Whistle



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NEWSLETTER OF

WHISTLEBLOWERS AUSTRALIA INC

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HOWARD TO JAIL WHISTLEBLOWERS

This was the front page headline in Sydney's *Sun-Herald* of 3 February 2002. The government's proposed legislation reveals a repressive agenda that is intensely hostile to open access to information. It also reveals how vital a role whistleblowers have to play in a society where top officials promote secrecy while mouthing platitudes about free speech. Whistleblowers Australia president Jean Lennane and national director Greg McMahon and others in the organisation have contributed mightily to opposing the proposed law. Turn the page for reports and comment.

Whistleblowers face jail as Libs use spy laws to plug leaks

By Andrew West and Brian Toohey,
Sun-Herald (Sydney), 3 February
2002, p. 4

THE Federal Government is about to introduce laws making it harder to expose political blunders and rorts.

The tough new laws mean whistleblowers could be jailed for revealing what the new legislation describes as "an official record of information".

Journalists would have to prove they had not published recklessly and had tried to check that leaked material was "authorised".

And, in a move which will cause grave unease among civil liberties groups, the media and the legal profession, the new law will not provide for a defence of public interest in a much broader range of cases.

The Criminal Code Amendment (Espionage and Related Offences) Bill is designed to toughen penalties for spying. It increases penalties for espionage from seven to 25 years.

But it is also a threat to those who leak information in the public interest.

Courts can impose a two-year jail term on people leaking — and receiving — documents without authorisation.

The proposed law, to be introduced by Attorney-General Daryl Williams, states: "A person commits an offence if the person communicates, or makes available, an official record of information."

That could, for instance, make it an offence to receive details of recent scandals such as the Peter Reith phone card affair, or even the ministerial gold travel passes revealed by *The Sun-Herald* last week.

Such stories rely on leaked documents — but most people would consider their exposure a threat to ministerial reputations, not national security.

It is feared the new laws will affect journalists, who are the main recipients of leaked material, and Opposition

politicians, who receive documents from public servants exposing corrupt or improper conduct.

The proposed bill ignores the recommendations of a 1991 review by the former chief justice, Sir Harry Gibbs. He urged that criminal penalties be dropped for leaks, other than those affecting national security.

In the Attorney-General's second-reading speech to Parliament last year, when he first tried to introduce the change, he presented the bill as an attempt to foil spies such as Australian citizen Jean-Pierre Wispelaere, arrested in the US in 1999 for tying to sell confidential documents.

But journalists' union federal secretary Chris Warren said: "An authorised disclosure is nothing more than a stage-managed story by a politician. The Government is using the ghosts of the September 11 tragedy to revive ideas for some very bad laws, which have been dormant for several years."

Under the changes, it would even be an offence to repeat a previously published leak.

The bill broadens dramatically the normal definition of official secrets to include almost any official record. In a memo, the Government concedes such information is "not necessarily designated with a security classification".

It would cover the occupants of every federal, office, from the Governor-General down to a receptionist in the Australian Sports Commission.

Mr Warren said the aim was to scare public servants. "They are trying to change the culture and introduce a climate of fear and even paralysis so that no-one will ever reveal anything, so the public will never know."

The law would have applied to documents revealing Australia's prior knowledge of the violence in East Timor in the days after the 1999 independence ballot — leaked to Channel 9 Sunday reporter John Lyons, then working for *The Bulletin*.

"This is a naked assault on the public right to know, designed to protect politicians from the revelations of corruption or embarrassment," Lyons said.

Hear no evil: the stories we could have missed

THE PHONECARD SCANDAL

In late 2000, it was revealed that Peter Reith had given his son Paul access to his parliamentary telephone card and bills of almost \$50,000 had been run up. The revelation came from a Finance Department leak, which began when a Telstra employee noticed the excessive charges.

TRAVELGATE

In 1997, Transport Minister John Stamp was forced to resign after claiming almost \$9,000 in travel allowances to which he was not entitled. Although he repaid the amount, an attempted cover-up within the Administrative Services Department pricked the conscience of a public servant who leaked the details, ultimately ensnaring Mr Sharp and his cabinet colleague, David Jull.

EAST TIMOR LEAK

In October 1999, a source somewhere within Australia's intelligence community leaked Defence Intelligence Organisation documents to Channel 9 Sunday reporter John Lyons, who was then with *The Bulletin*. The documents not only revealed that the Howard Government had been warned of impending violence in East Timor, but had even argued against the use of peacekeepers.

Gags go on: expose a porky, go directly to jail

by Richard Ackland, *Sydney Morning Herald*, 22 February 2002, p. 11
(extract)

[...] For public servants and military types who know that a government is making milage out of fabulous fibs there are some awful impediments to the truth emerging. If the Government gets its way there soon will be even greater impediments to the exposure of political falsities. The old Common-

wealth Crimes Act, principally a product of security concerns emerging at the time of World War I, provides jail sentences for a public servant who “communicates” sensitive or “prescribed” information. Jail terms also can apply to those who receive this information.

What the Howard Government had before the tail end of the previous parliament, and will reintroduce soon into the new parliament, is another piece of legislation which extends, widens and strengthens that regime. The Criminal Code Amendment (Espionage and Related Offences) Bill seeks to increase the categories of information that cannot be leaked in an unauthorised manner. In fact, it will replace the espionage and official secret provisions of the old Crimes Act.

There will be two-year jail terms for those communicating and those receiving “official information”. The information need have nothing to do with the security or defence of the country. The accused need have no intention to prejudice defence or security. Accused people who receive information bear the onus of proof that the official information was made available against their wishes. There is no public-interest defence for any of these offences. And just what constitutes “official information”? State-sanctioned lies may qualify.

The Attorney-General, Daryl Williams, says the Criminal Code Amendment simply “strengthens and restates existing provisions in the Crimes Act”. His soothing noises run counter to his legislation’s wording.

There are other provisions in his proposed law for which six months’ jail is provided, such as “retaining” or failing to comply with a direction with respect to the disposal of official information, or if someone fails to take “reasonable care” of an official record of information. This is all dressed up as being part of our response to terrorism, which is just as spurious as the idea that refugees seeking a better life for their children would toss those children into the sea.

Even if the new espionage laws are only an elaboration of the Crimes Act, the message is clear. It is a piece of legislation that will touch the nerve ends of every public servant who thinks twice about doing something

about exposing the distortions and mischief that is the currency of their political masters. Such a law would permit politicians to keep telling lies with minimum fear of contradiction from those who know the truth.

Letters to the editor

The Australian, 8 February 2002, p. 10

THE federal Government's proposed “whistleblower” legislation is a blatant attempt to sneak through draconian restraints on freedom of speech in the jittery aftermath of September 11.

Hidden among increased penalties for spying, are potential jail sentences for those who release and publish “unauthorised” information which has nothing to do with national security,

Governments of all political flavours like to conduct their affairs in secrecy; it is the actions of whistleblowers and those who publish their leaks that occasionally allow the public to catch a glimpse of what is being done in their name.

A mood of international tension is a perfect environment in which to clobber traitors and their messengers — the media.

The “burn-the-witch” jingoism that has accompanied the backlash against terrorism provides ample camouflage for a couple of low blows against free speech in the fine print.

Whistleblowers are already punished — by losing their jobs or being ostracised — for making public wrongdoing in government and elsewhere. Journalists who publish leaked information and refuse to reveal their sources can be, and sometimes are, jailed under existing contempt of court provisions.

A (relatively) free press is a safeguard against totalitarianism, the last refuge of the individual overwhelmed by an ever more regulated society. To further restrict the ability of journalists to expose the murkier depths of government cannot be in the public interest.

Tony Rees, Senior Lecturer in Journalism, Curtin University, Perth

THE Howard Government wants a monopoly on our access to information about what they are doing.

The new anti-whistleblower laws are a threat to open government and open society. They could prevent public servants acting in the public interest.

They could send whistleblowers and journalists to jail without passing documents or collecting secrets.

For proposing such draconian laws, Attorney-General Daryl Williams should go directly to jail — without passing this law, or collecting any whistleblowers or journalists (or any get-out-of-jail-free cards).

Bill Fisher, North Plympton, SA

Truth overboard

Letters to the editor

Sydney Morning Herald, 15 February 2002, p. 10

The saddest aspect of the false announcements about the refugee children being thrown overboard is not that our politicians lied to us. We have come to expect that.

The saddest aspect is that not one of the senior naval officers, or the civilian staff in the three ministries involved who knew what had happened, was willing at the time to tell the truth to the Australian people.

It would seem that there is no need for the Criminal Code Amendment Bill which would put whistleblowers in jail. Protecting their career will keep most people quiet.

Peter Bowden, Wahroonga

Sydney Morning Herald, 20 February 2002, p. 12

I was most surprised and disappointed that during the “children thrown overboard” hoax perpetrated by Mr Howard and his ministers from October 7 to November 8, not a single, public-spirited whistleblower stepped forward from our navy, Defence Department or Public Service to demolish the great hoax (lie).

Mr Howard has no need to legislate against whistleblowers while he has such tame bureaucrats and defence personnel. One must also assume that all investigative journalists were on leave during the same period.

Ian Rodden (ex-RAN), Austinmer

With the Government in disarray, laws passed to give the detaining force unbelievable power plus the proposed law to contain whistleblowers on the agenda, could a law to make dissent a criminal offence be far behind?

John Daniher, Goulburn

Sailor hero betrayed as truth tossed overboard

by Frank Walker, *Sun-Herald*, 24 February 2002, pp. 4-5

THE young sailor whose brave rescue of boat people was exploited by the Federal Government during the election has told her family that children were never thrown overboard.

[This story goes on to describe the feelings of the family of Able Seaman Bosun's Mate Laura Whittle, a photo of whom rescuing a refugee family from the water were misleadingly used by the government. The following paragraphs from the article provide an important lesson.]

Despite a Navy gag on family members talking to the press, friends and grandparents of the 19-year-old sailor last week agreed to speak.

[...]

Yesterday Defence spokeswoman Anna Marsden denied the family had been gagged from talking to the media about the incident.

But she conceded they had been told talking to the media could endanger their lives and that of their daughter as they could become targets of people who supported refugees' efforts to get into Australia.

"We have advised the families of all our personnel not to allow themselves to be identified because there are people in Australia who might have a very contrary view to what they are doing," Ms Marsden said.

"We feel it could be a security risk. The families are potentially at risk. We have pointed out to them that, for their own protection and their serving family members, we would rather they did not talk publicly. It is for their own protection."

[*Comment by Brian Martin:* The reality is that the only people protected by keeping quiet are those covering up the truth. Contrary to Ms Marsden,

refugees and their supporters desperately wanted the truth about the overboard story to come out. These revealing quotes, at the very end of this article, show the lengths officials will go to try to shut people up by frightening them.

The important wider message is this: even if you cannot afford to speak out, others may be able to speak on your behalf or in your place. If you're a whistleblower who has made a settlement with a silencing clause, that doesn't stop others from speaking about the case. If you're in danger of being sued for defamation for saying something, there may be someone else who is less vulnerable — perhaps having little money or living in another country — who can speak out more easily. Let's be creative in finding ways around techniques of intimidation.]

In praise of whistleblowers

Whistleblowing is good for society, but bad for careers. It should be good for both

The Economist, 12 January 2002, pages 13-14

WHEN Philip Bowman was chief financial officer of Coles Myer, an Australian retailer, he exposed the fact that a vice-chairman had used a big chunk of the retailer's money to buy shares in a company that he, the vice-chairman, controlled. The case made headline news. Yet even after a two-year court battle to win compensation for wrongful dismissal, Mr Bowman was, in effect, ostracised from working in his home country. He says that companies that might have hired him worried about skeletons lurking in their own cupboards.

Yet Mr Bowman was lucky: he moved to Britain and subsequently became chief executive of Allied Domecq, the world's second-largest wines and spirits group. Sadly, few whistleblowers' stories end so happily. Many ruin their careers, and sometimes even their health. Because of society's aversion to people who are often seen more as snitches than as heroes, those who blow the whistle (and put up with the persecution and harassment that almost invariably

follow) have to be abnormally persistent. They become obsessive about their cause and blind to other aspects of their life. Many end up pursuing personal vendettas as well as the wrongdoing that originally sparked their action.

Whistleblowers provide an invaluable public service. An employee who (to quote Black's Law Dictionary) "reports illegal or wrongful activities of his employer or fellow employees" can save his organisation millions, quite apart from carrying out his public duty. The American government claims that most of the billions of dollars that it retrieves from those who defraud federal agencies come via whistleblowers' reports. Many investigations carried out by antitrust authorities into illegal cartels, such as the recent vitamin price-fixing case in Europe, are initiated by reports from whistleblowers.

Despite a growing body of legislation to protect whistleblowers, their lot remains a miserable one. In the United States, many lawyers are reluctant to take up cases involving public-sector whistleblowers because their chances of winning are so slim. Those who pursue lawsuits for wrongful dismissal through the courts can find themselves enmeshed for years. And any damages eventually awarded are seldom a match for the damage actually suffered. It is no surprise that employees are reluctant to fulfil their public duty when they get such faint praise for doing so. Can anything be done to encourage whistleblowers?

Who's afraid of denouncing crooks?

Many hold back because they are afraid — afraid that they will lose their jobs, and maybe also their friends. Mr Bowman says: "So-called friends congratulated me privately, but would not lift a finger of support in public." So the first essential is to provide a secure environment in which whistleblowers will feel safe discussing their suspicions. (Whistleblowers usually start off with little more than a vague sense that something fishy is going on.)

Employers themselves are reluctant to provide such an environment, although there are some notable exceptions. Such an attitude is understandable; whistleblowers rarely bear good tidings for a company's share

price. Yet in the long run they can save their employers far more than they cost, for instance by uncovering embezzlement. Even in cases such as price-fixing or cartels, where revelations by whistleblowers may unequivocally damage a company, it can be better to provide a forum that stops the practice without the glare of publicity that comes when trustbusters knock on doors at dawn.

This month, Britain's financial-services regulator is setting up a hotline for whistleblowers. Uniquely, British law sees a substantial role for regulatory bodies acting as an independent outside party that is at the same time discreet and knowledgeable about industry practices. In America, there is legislation in the pipeline designed to speed up the processing of whistleblowing cases. More legislation and more independent intermediaries are certainly welcome. But ultimately the answer is for employers, in both private and public sectors, to learn to appreciate the merits of whistleblowing, and to reward genuine whistleblowers with promotion rather than the sack. They might even then eliminate the malpractices that trouble their conscientious employees in the first place — and what a good thing that would be.

Whistleblowing: a difficult decision

by Jill Iliffe, Australian Nursing
Federation Federal Secretary

Editorial, *Australian Nursing Journal*,
Vol. 9, No. 7, February 2002

What do you do when something happens that you know to be wrong, unethical or inappropriate?

Reading Kevin's [Kevin Moylan, former Tasmanian psychiatric nurse whistleblower] story in this ANJ brought to mind a number of situations during my nursing career where I was faced with this question. A colleague behaves unprofessionally; health care is provided that you know to be inappropriate; a decision is made that is ethically questionable; there is an adverse outcome that could have been avoided, and was perhaps even the result of negligence.

What do you do?

It is often a difficult decision to make, particularly when the other person or persons are more senior to you and in a position of power and authority. And every situation is different and requires a different response.

As a society, we are often unsupportive of people who speak out and expose situations that they consider to be wrong, unethical or inappropriate — who "blow the whistle." Yet most "whistleblowers" are ordinary people, just like you and I, who find themselves in a situation where they have to make the decision to speak out or remain silent. And usually the decision to speak out is a difficult one to make and comes at considerable personal cost.

A few months ago, Roy Morgan Research released results of their annual Morgan Poll on those professions considered by the public to be the most honest and ethical. Nursing has only been included in the poll since 1994. Since then, it has topped the list — eight years in a row. There are many reasons put forward for this phenomenon. Nurses rarely have a financial incentive in promoting themselves. Their motives are seen to be altruistic rather than self serving. Nurses generally have a close, caring and supportive relationship with the people they provide care to. It is often nurses who are the advocates or the spokespersons for people in their care. What do nurses think of "whistleblowers"? Are we sympathetic? Do we try to understand? Or do we, like many in society, feel uncomfortable, turn our backs, keep our distance and ignore the "whistleblowers'" cries for understanding and support?

I think that nurses, as the most honest and ethical professional group in the eyes of the general public, have a role in creating an environment of continuous improvement, where colleagues can talk about issues of concern with their peers and be supported; where people who raise issues of concern can be heard without fear of retribution; where unprofessional, unethical, or questionable behaviour can be dealt with in a positive manner; and, where frivolous or vexatious complaints are not supported. The ANF does not at present have a policy on "whistleblowing," however I think it is time

that we did — that we debate the issue and develop a policy.

What do you think?

[*Isla MacGregor adds: Congratulations to Kevin Moylan for his perseverance in campaigning for protection of whistleblowers, pressing the ANF to develop policy for whistleblower protection and helping make "blowing the whistle" the front cover story in the February 2002 issue of the ANJ.*]

Eco-activist jailed as spy

Australian, 27 December 2001, p. 7

VLADIVOSTOK: To the dismay of human rights bodies, a Russian military court has convicted ecological whistleblower Grigory Pasko of spying for passing on classified information to the Japanese media.

The court in the Far Eastern port city of Vladivostok handed down a four-year jail term to the 40-year-old journalist on Tuesday. He was led away from the courtroom in handcuffs.

Working with the Russian Pacific fleet's newspaper, Mr Pasko was arrested in 1997 after passing footage to Japan's NHK state television company of the navy dumping nuclear waste into the Pacific Ocean.

Prosecutors accused Pasko of handing over a secret document detailing a military base that held radioactive waste. However, Tuesday's court judgment made no mention of NHK.

Pasko's lawyers claimed much of the evidence used against him had been falsified.

The court struck out nine of the 10 charges, but found Pasko guilty of collecting classified information about Pacific fleet exercises to pass on to the Japanese media.

Having already been held in prison during the legal process, Pasko will serve two years and four months.

The court also stripped him of his captain's rank.

"The interests of Ministry of Defence bureaucrats and the FSB (ex-KGB) have triumphed over logic and the law," said Alexei Simonov of the Glasnost foundation.

[...]

Articles and reports

Poison your pets with multinational offerings

by Tom Lonsdale
Vet and author

Veterinarian Tom Lonsdale is selling plenty of his book *Raw Meaty Bones* in the US but the Australian media seems to have blacked him out because the multinational pet food companies don't want their dodgy doggy tucker exposed.

Poisons injure health or destroy life. Some are quick acting — strychnine and cyanide — others act slowly — alcohol and tobacco — although addiction speeds up the process. Sometimes packet labels warn about the contents. 'Smoking kills' say the labels, but only now after years of anti-tobacco lobbying.

Alcohol containers sometimes carry labels recommending limited intake of the poison, but generally carry no warnings. Some poisons are banned and some are sanctioned and some aren't even recognised as poisons. Take artificial pet foods for instance — widely available in supermarkets, petrol stations and corner stores (do they still exist?) — they injure the health of a majority of the world's pets, but few folks know or are allowed to know.

As a veterinary practitioner confronted by the procession of bedraggled diet-affected pets attending my clinic I was, at first, too busy dealing with the problems to notice their origin. Besides, I was handicapped by a university education and constant bombardment by pet food ads. But eventually I woke up to my naiveté, my complicity, in promoting artificial modern diets to the pets under my care. Pet owners accepted my apologies for past misleading advice and together we set about helping their artificial-diet-addicted pets.

By the early nineties a group of Australian vets, The Raw Meaty Bone Lobby, started to chip away at the artificial pet food dogma encasing the veterinary profession. The Australian Veterinary Association (AVA), itself

in receipt of pet food company funds, led the counter attack. Within the professional journals the AVA banned discussion of diet and diet induced dental disease and issued media statements against the dissident members.

Hostilities escalated and spilt over into the UK veterinary profession with the US pet food regulator, the FDA (Food and Drug Administration), involved in exchanges too. Along the way the Western Plains Zoo, World Wildlife Fund, ABC Science Show, a professor at the National Health & Medical Research Council and numerous university lecturers and university departments were shown to be involved with, or actively promoting the interests of, the artificial pet food industry. High Court judge Justice Michael Kirby, Patron of the RSPCA, justified that organisation's involvement with Colgate-Palmolive, makers of "Science Diet," on the basis that the RSPCA needed the money.

Besides the toothpaste maker the other major players are American transnationals, Mars Inc. and Procter and Gamble and the Swiss giant Nestlé. Money talks and the watchdogs stay silent, whether they be protecting against cruelty to animals, truth in labelling or the welfare of children in our schools. A book was needed to tell it the way it is and attempt to get some sort of debate going.

Starting in October 1996 I sat in my garret scribbling away at *Happy Zone*, for that was the working title. I hoped that by working in the "Zone" I could make people happy by revealing sombre truths and showing how things could be better. Natural pet food is cheaper, pets live healthier longer lives, vet bills reduce and the environment gets a better deal. Except for the artificial pet food companies and their veterinary allies it's a win, win, win situation.

Richard Potter the defamation lawyer, two barristers and four other lawyers commented on the text and *Happy Zone* metamorphosed into *Raw Meaty Bones: Promote Health*. By August 2001 the book was ready to be launched, but instead more layers were added to the multi-layered scandal. *The*

Australian newspaper had exclusive rights to a story about the book scheduled for Saturday 18 August — but the story and the colour photographs finished in the can. Michael Stutchbury, the editor of *The Australian*, failed to return calls or answer correspondence regarding the newspaper's back flip.

On Sunday 19 August the Sydney newspaper *The Sun-Herald* scheduled to publish an 800 word exposé based on revelations contained in *Raw Meaty Bones*, but that finished in the can too. Worse still, an advertorial headline in the paper's science pages told readers: ***New food helps pets live longer.*** (The Mars company Uncle Ben's of Australia have since released a new line of pet foods which they claim: "Add life to the life of your pet.")

Messrs Laws, Jones and Carlton were sent copies of *Raw Meaty Bones*, as were 50 other journalists. Almost all appear to have ignored the information and their employers still broadcast pet food ads. Bert Newton, on his Good Morning Australia program, went to air with a sanitised version of the story — the book *Raw Meaty Bones* didn't get a mention; neither was it acknowledged that the diet-affected Labrador dog in Bert's story was filmed at my veterinary clinic in 1994! Regarding the multi-layered pet food scandal, viewers were spared the details, but Bert did encourage us to feed our pets raw meaty bones.

Is truth too hard to bear; is the full story too difficult for Australia's journalists? Will a slow poison affect us all? Time may tell, but at least we have a benchmark.

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For additional information and online purchase of *Raw Meaty Bones: Promote Health* go to:
www.rawmeatybones.com/

Secrecy clauses unacceptable

Unpublished letter to the editor sent to the Tasmanian media on 12 February 2002

The spread of commercial in confidence clauses may help big business. It tends to disadvantage small business, regulatory agencies and customers. For sweeping confidentiality clauses to become a part of government and community organizations is surely a retrograde step. When the governor-general used legal advice and confidentiality as an excuse for the church's inaction on child abuse it was greeted with expressions of community outrage. Yet blanket confidentiality provisions are being built into government committees which include community representation.

Some community representatives on the Tasmania Together Committee did not agree with the confidentiality clause they were meant to be silenced by and they spoke out. It has been very disconcerting to discover that a blanket secrecy clause has been imposed by the Government on members of the Children's Commission Committee (the Commission for Children's Consultative Council). Community representatives on the Children's Commission Committee are now unable to divulge any information they gain in their capacity as members of the Committee. This clause is more restrictive than the secrecy provisions of the State Service Act. Under these circumstances it is not possible for community representatives to participate openly or in the public interest.

We should be very wary of giving anybody the power to hide behind the excuse that no-one had the right, let alone the obligation, to speak out, except when legal proceedings or the protection of the identity of children or adults make public disclosure incorrect. Secrecy in the "best interests of the child" may prove to be secrecy in the best interests of abusive individuals or institutions. The community's interests in the work of the Children's Commission is not restricted to matters relating to individuals but more concerned with those pertaining to public consultation, education,

research, policy development and legislative reform.

The Government needs to recognise that community representatives have an obligation and a reasonable expectation to openly represent the community and that obligation should not be compromised by blanket confidentiality clauses. It is an unacceptable ethical burden to expect from community representatives.

Blanket confidentiality agreements can blunt the sensitivity and discretion which should be brought to decisions on what belongs in the public arena and what doesn't, they can encourage inappropriate censorship and hide inefficiency and poor decision-making, and they can undermine the hard-fought gains to make our public life and public bodies more open, accountable and transparent.

* * *

[Isla MacGregor comments: This letter was signed by eight high-profile human rights and justice campaigners in Tasmania but was not published or aired in any Tasmanian media. Several people have made telephone enquiries to the Office of the Commissioner for Children seeking copies of the Confidentiality Agreement and the Discretionary Disclosure Form (conflict of interest form) and have had either no response or have been fobbed off and asked to put their enquiries in writing. As yet, to my knowledge, no journalists have applied under FOI for these documents. It has been alleged that some of the community representatives on the Consultative Council disagree with the Confidentiality Agreement but are too frightened to speak out.

Word around the journalist traps in Tasmania is that the Bacon Government is more secretive than previous Liberal or Labor governments and this has been a source of frustration for getting stories out in the public interest. Over the past year several articles have appeared in the local print media exposing the Bacon Government's overuse of its spin doctors (and their high cost to the taxpayer) and its frequent silences on controversial issues. "A climate of fear" is an oft heard phrase amongst political activists and commentators when describing Tasmania under the Bacon regime. This climate of secrecy

and intimidation is grist to the mill for Premier Jim Bacon considering his previous role in the Norm Gallagher faction of the Builders' Labourers Federation.]

Hulls reconsiders: jail whistleblower Hoser!

by Raymond Hoser
30 January 2002

On 21 January, the VGS as agents for Victoria's Attorney General, Robert Justin Hulls, served on Raymond Hoser a collection of documents seeking to cross-appeal the defective judgement and sentence of Supreme Court Judge Geoffrey Eames.

In essence, Rob Hulls is asking Eames to jail Hoser, seize all his assets and have him bankrupted for telling the truth.

Recall Eames made history when he sentenced Australia's leading corruption author, Raymond Hoser to a fine totaling an estimated \$35,000 for publishing the truth about corruption in the judiciary in his best-selling *Victoria Police Corruption* books.

The sentence was meant to be the knock-out blow that not only stopped Raymond Hoser from ever publishing details about corruption in high places again, but also to deter any other like-minded whistleblowers.

However upon reflection, it seems that the Hulls side has decided that maybe jailing Hoser, seizing his assets and sending him and his family broke is really the only viable option to stop this whistleblowing juggernaut.

And so, the VGS have served "cross appeal" documents against the Hoser side.

Hoser made it clear that he was appealing the defective Eames judgement at the time it was handed down on 29 November 2001.

In due course he served the relevant documents on the Hulls side and the Supreme Court. That was in mid December 2001.

Of course had Hoser been a second or more late in serving his documents, his rights to an appeal would have been knocked out forever.

This has happened in the past to both Hoser and countless other litigants who have been pitted against

the legal might of the taxpayer funded State Government.

So it came as a bit of a rude shock when on 21 January this year, the VGS sent one of their henchmen to 488 Park Road, Park Orchards, Victoria to serve on the Hoser family notice that they intended cross-appealing the Eames judgement.

The notice was handed to Hoser's wife, Shireen, as Hoser himself was busy in Sydney delivering 1,100 books to a major book distribution company, not that where Hoser was made any real difference, as by law the VGS only needed to serve it on Hoser's residence and/or place of business, which they did.

However the expiry date for the right to cross appeal was 18 January 2002, and that's the major difficulty with what the VGS have done!

Now if the legal system has any balance and impartiality, you'd expect the Supreme Court to disallow the Hulls side the right to cross appeal the Eames judgement because they are out of time.

Now we were right when we told our barristers that we'd lose the unlosable case, because of the inherent inability of a sizeable chunk of the legal system to either find the truth, even when thrust in front of them, or to enforce the laws they are meant to.

But let's see if our instincts are right this time, and if the courts improperly allow the VGS to run with their cross-appeal, even though they are out of time.

The cross-appeal documents also come out with some other pearls.

The VGS side is now trying to deny the existence of the Bingley tape where he admits to paying off magistrate Hugh Adams in 1988.

Just to allay any doubts as to the existence of this tape, we've decided to plonk the whole thing on the web so that anyone, including perhaps Eames himself and the VGS can download and listen to it as an MP3 file.

It may also help highlight the falsity of some of the other bizarre inferences Eames drew in relation to the tape in his defective judgement.

Now this is not to be taken as an attack on Eames' motives in this instance. While he got his facts wrong, this alone is not a hanging offence, although it does show that if Eames is not corrupt, he clearly lacks compe-

tence when it comes to establishing fact and truth.

Hear the Bingley confession tape at <http://www.smuggled.com/Bing2.mp3>.

Now just to show we are hiding nothing, we've also made available all the other relevant tapes and transcripts from that fateful 1988 court hearing available, including the falsified Bingley record of interview on 7 March 1988, the Bingley tape itself of December 1988 and the entire 15 sides of tape from the Hugh Adams trial as openly recorded under Adams' own direction (thereby rebutting that other crazy Eames assertion, to the effect that a Mr. Burke was a rent-a-witness in the case — when in reality he had nothing to do with it).

Oh and we've also made available to the public the recording of the successful appeal of the wrongful Adams judgement that was heard about a year or so later in front of Judge Mervyn Kimm.

Now all this material has been accurately summarized in *The Hoser Files* since 1995 and the raw transcripts have been sitting on the web at <http://www.smuggled.com/Tran1.htm> since mid 1999. But we thought that the tapes would be useful to allay the doubts of anyone who believes any of the tripe printed in the Eames judgement or elsewhere.

Because of the size of the MP3 files (as listed above) we will burn them onto a CD-Rom, complete with the relevant case transcripts and the like (as identified above), to anyone who wants them, provided they send us a cheque or money order for \$50 Australian which covers the cost of burning and posting the CD-rom and related incidental expenses. We are not making a profit out of this exercise and are only doing it as a further benefit for those who wish to study corruption in the police and legal systems and seek indelible proof that such goes on and/or excellent proven examples of same.

Because all this material is already on "masters" having been converted to mp3 files already, we can supply the CDs as fast as the postal and e-mail systems allow and this is usually within 24 days to anywhere on planet Earth.

Meanwhile we should also mention the Hulls side has been put on notice that we do not regard it as appropriate

that they be allowed an automatic right of cross-appeal, bearing in mind the fact that they do not appear to have any reasonable excuse for being late and that letter has also been posted on the web on the relevant link below. Oh and that's before we even begin to look at some of the patently ridiculous statements peddled within the VGS's cross appeal documents!

This media release and other documents are published online at <http://www.smuggled.com/medre108.htm>.

The Dreyfus case: whistleblowing in France of the 1890s

by Brian Coe

In late 1894, a French army court martial sentenced Captain Alfred Dreyfus to life imprisonment on Devil's Island, off the coast of French Guiana, for passing army secrets to the German ambassador to Paris.

In fact he had done no such thing. His only crimes were that he was unpopular with his brother officers and that he was Jewish at a time of rampant anti-Semitism in France. His conviction was based on forged evidence, with the top army command exploiting the situation, ultimately with the backing of the French government, including President Felix Faure.

Devil's Island was a dreadful place at the best of times, used, according to contemporary French penological theory, as a prison for the worst and most notorious of criminals, in the hope that reports of their sufferings would deter others.

But the spite of corrupt army chiefs toward the innocent Dreyfus knew no bounds. They replaced the relatively humane prison commandant with a sadist, with a virtual licence to do his worst with Dreyfus. For a long time, Dreyfus was kept in solitary confinement, locked to his bed.

Two whistleblowers were responsible for Dreyfus being returned to France after serving "only" four years and four months of his sentence, and ultimately resuming his army career. The first was Lt-Col. Georges

Picquart, chief of French army intelligence,

Picquart had played a major role in securing the conviction of Dreyfus by the court martial. He had done this because he couldn't believe that senior officers of the French army would tolerate an innocent man being condemned to life on Devil's Island. However, in the course of his duties as head of intelligence, he found that information from the original source was still being passed on to the German ambassador, despite Dreyfus being out of the way on Devil's Island. This led him to reexamine the documentation on which the conviction was based, and had no doubt it was forged.

The army top command, instead of ordering the release of Dreyfus, told Picquart to forget about his discovery. Picquart was outraged. He started doing everything in his power to reverse the verdict of the court martial. Clearly in the hope he would be killed, the infuriated army command transferred him to the most dangerous posting in the French army, the area of a rebellion in North Africa. However, the French general on the spot saw through the plot, and ordered Picquart to a safer location. The army then recalled Picquart to Paris, where he was imprisoned on a trumped-up charge.

The second whistleblower was Emile Zola. Zola was the son of a former Venetian army engineer engaged in the construction of a dam in the mountains behind Aix-en-Provence in Southern France, where he lived from the age of three to about eighteen. He was a leading novelist, journalist and general man-of-letters in nineteenth century France, something of a French Dickens, renowned for his writing about social problems, such as alcohol abuse, ignorance, poor treatment and living conditions for the working class, incompetence in the army and prostitution. "Nana", a film based on his novel about the life of a Paris prostitute, has been played on Melbourne TV.

On hearing about the work of Picquart, and of friends and family of Dreyfus in trying to establish his innocence, Zola used his journalistic skills to investigate the matter, became convinced that a monstrous miscarriage of justice had occurred and there-

after devoted most of his time and energy to having Dreyfus declared innocent.

This culminated in an open letter to a newspaper, headed "I accuse," in which he accused virtually the whole French establishment, including the president, of participating in a cover-up. As with Picquart, this led to his trial of a trumped up charge, but he escaped to England before being arrested.

From the beginning of the Dreyfus case, the French gutter press was whipping up a hysteria of hatred against Dreyfus, and then Picquart and Zola, and against Jews.

In England, Zola continued to work for the release of Dreyfus and Picquart, and to write a new novel. In France, and in other countries of Europe, and in America, a growing number of people were outraged by the injustices done to Dreyfus, Picquart and Zola. In response to their agitation, in mid-1899 Dreyfus was brought back from Devil's Island to face a new court martial.

In the face of overwhelming evidence to the contrary, the new court martial confirmed the verdict of the first one. But public opinion had changed for the better and the government shrank from renewing Dreyfus's imprisonment. President Faure died, to be succeeded by the more reasonable Emile Loubet. Eventually, in 1906, both Dreyfus and Picquart resumed army service. Dreyfus was given a Legion of Honour. Picquart was promoted to general, later entered politics and eventually became Minister for Defence. Both later served in World War I, although Picquart was accidentally killed, thrown from his horse, shortly after it broke out. Dreyfus lived on until 1935.

In the meantime, Zola had died from carbon monoxide poisoning, as the result of the flue from the coke-fired combustion heater of his home becoming blocked. His body was eventually re-buried by the French government in the Pantheon, the burial place for France's most distinguished citizens.

"Whistleblower" web site to counter social clearcutting

"Blow the whistle on 'Social Clearcutting' by the Liberal government!"

That was the message delivered today by Bob Kissner, president of the 1200-member British Columbia Association of Social Workers, at a special news conference to announce <http://www.bcwhistleblower.ca>. The new Web site will allow members of the public, social workers and allied professionals to report the painful consequences of recent Liberal government cuts to social services.

Anyone may visit the Web site, which is equipped with tools and links to reference Web sites that will allow people to responsibly and confidentially record and report the real, human consequences of the government's "Social Clearcutting," Kissner said.

"While we respect the government's authority to initiate policy and funding changes, our ethics require that, in cases of direct harm to our clients, these examples need to be red circled, reported and brought to light. And if this government chooses to turn its back on the poor, the sick and the helpless, then we must turn to the broader public for recognition and action on social needs," Kissner said, in explaining the new Web site

"Today, British Columbia is dominated by a single, simple ideological solution to all problems. We believe this is the wrong approach and will increase acute human suffering in our province. This government is applying simple solutions to complex problems that are beyond simple solutions," Kissner added.

"The only response we can possibly take to this situation is to make sure the government understands the consequences of its actions by advocating for the people we serve. Advocacy is one of our strongest traditions, the foundation of our practice and enshrined in our Code of Ethics. And this Web site is only one of the ways in which we will continue to advocate for the people we serve."

Editing *The Whistle*

Greetings from your new editor. To help with providing material and dealing with some submissions, three individuals have agreed to be associate editors:

- Don Eldridge
- Isla MacGregor
- Kim Sawyer

Welcome aboard!

Their contributions will be both visible and behind the scenes. For example, Don supplied several of the items in this issue's Media Watch section. I also thank others who have forwarded relevant items.

Send all articles, letters and other items of interest to me at bmartin@uow.edu.au (the best option for me) or PO Box U129, Wollongong NSW 2500. You can ring me at 02-4221 3763 or 02-4228 7860.

Brian Martin

The business of Whistleblowers Australia

Feliks Perera, treasurer of Whistleblowers Australia (WBA), reports that some callers seem to expect direct assistance from WBA in getting their cases resolved. This is not the business of WBA. In 1996, the national committee approved a leaflet introducing WBA. Here are some pertinent excerpts.

* * *

The goal of Whistleblowers Australia is to help promote a society in which it is possible to speak out without reprisal about corruption, dangers to the public and environment and other vital social issues, and to help those who speak out in this way to help themselves.

WBA uses two main approaches to achieve this goal.

1. Self-help and mutual help The best ways for whistleblowers to succeed in their own efforts is for them to develop their own skills and understanding and to exchange insights with others in

similar situations. WBA encourages self-help by providing articles and leaflets to whistleblowers and publishing a newsletter. The organisation encourages mutual help by holding meetings of whistleblowers and supporters, and by providing contacts with like-minded individuals and groups.

2. Campaigns WBA supports initiatives and ongoing efforts to create a culture where people can speak out without reprisal. Some campaigns are promoting free speech for employees, challenging defamation restraints and supporting whistleblower legislation.

There are limits to what WBA can do. It does not normally act as an advocate for individual whistleblowers. It has only minimal funds obtained from memberships. All committee members act on a voluntary basis. Unfortunately, WBA does not have the resources to campaign on any individual's behalf. What WBA can do is provide information and contacts so that whistleblowers and their supporters can become more effective in achieving their own goals.

* * *

Draft minutes of WBA Annual General Meeting

Parramatta, NSW.
1.20pm on 24th November 2001

1. Meeting chaired by J Lennane, President. Minutes taken by A Stonham.

[2. Apologies and attendance are omitted here to preserve members' confidentiality.]

3. Previous minutes:

J Lennane, advised that the previous minutes, which had been published in *The Whistle*, were not available except on video, which could be viewed if required. She asked if anyone could move that the previous minutes, as published, should be accepted as a true and accurate record.

Proposed: C Kardell
Seconded: B Martin.

4. Election of office bearers.

J Lennane, nominee for the position of National President, stood down for Brian Martin to proceed as Chair.

Position of National President.

Jean Lennane, being the only nominee, was elected unopposed. Brian Martin led the Meeting in thanking her for her commitment and a job well done. He then asked Jean to take the Chair.

The following nominees to the Executive were elected unopposed:

- ☐ National Vice President: Christina Schwerin
- ☐ National Junior Vice President: Avon Lovell.
- ☐ National Treasurer: Feliks Perera.
- ☐ National Secretary: Anne Stonham
- ☐ National Director: Greg McMahon.

Jean Lennane congratulated the incoming office bearers on behalf of the Meeting and thanked them for their continuing good work and support of Whistleblowers.

- ☐ National Ordinary Committee Members (6).

Nominees are: Matilda Bawden (SA), Catherine Crout-Habel (SA), Shelley Pezy (SA), John White (WA), Frank Scott (WA), Geoff Turner (NSW), and B Martin (NSW).

J Lennane noted that there were seven nominations and that the Constitution only permitted the election of six ordinary committee members. B Martin added that a formal change to the Constitution would be needed to permit the election of more than six.

J Lennane expressed the view that a formal election process was probably not the best way to resolve the impasse. She noted that the SA Branch was over represented, by way of comparison with the other states, and suggested (by telephone hook-up) that they consider whether one of their number might withdraw their nomination. Further, that the SA

participation at a national level had generally been strong and that it could continue whether or not they were on the Committee.

The SA representatives withdrew for discussion and subsequently Shelley Pezy advised that she was withdrawing her nomination.

Consequently, the following nominees were elected unopposed:

Matilda Bawden (SA).

Catherine Crout-Habel (SA).

John White (WA).

Frank Scott (WA).

Geoff Turner (NSW) - Information Technology Contact.

Brian Martin (NSW) - International Director.

Jean Lennane reminded the Meeting that the Branch Presidents, C Kardell (NSW) and J Pezy (SA), were automatically part of the National Committee.

Jean congratulated the incoming members and urged them and their colleagues to be actively involved at a national level.

Postscript: Rachael Westwood, the outgoing Secretary, had advised by letter that she would not be seeking re-election due to other commitments. She provided a current membership list on disk (223 members) and details of records held for the group. She took the opportunity to record her thanks for all the support she has received and sent her best wishes to the incoming secretary.

5. Position of Public Officer.

Jean Lennane advised the Meeting that Vince Neary is willing to continue to be the Public Officer if required.

Agreed: Vince's offer to be accepted with our thanks.

Business arising: Vince has enclosed an authority to pay the lodgement fee which is to be forwarded to the Dept. of Fair Trading pursuant to legislative requirements. It must be signed by two members designated for the purpose by the Meeting.

Agreed: Jean Lennane and Brian Martin authorised so to do.

6. Treasurer's Report:

F Perera tabled a financial statement for the (12) month period ending

30/6/01; the essential details being as follows:

| | |
|----------------------------------|--|
| Accumulated fund brought forward | \$6333.41 |
| Income | \$3489.51 |
| Expenses | \$5730.17 (Whistle production, Insurance, networking expenses, refunds to branches, AGM costs, etc.) |
| Balance | \$4092.75 |

Business arising:

F Perera, responding to B Taylor's question, said that the finances were in good shape, but that we should always be looking for fresh members as there was a high turnover. He also reminded those present that subscriptions, and donations from people who support us directly and indirectly, were to be sent directly to him so as to eliminate confusion.

Finally he thanked everyone for their support; saying that it had been a pleasure to be the Treasurer. B Martin expressed the view that we should be thankful for his sound management of the group's finances.

B Coe asked F Perera to explain what the Victorian expenses entail. He explained that they had been incurred by C Schwerin and included, for example, production costs for circulars, and correspondence costs.

F Perera advised that J Lennane had, once again, paid for the group's public liability insurance. He thanked her for her good work and asked that the Minutes formally acknowledge her generosity and our gratitude.

Proposed: Cynthia Kardell

Seconded: Brian Martin.

J Lennane called for a motion that the Financial Statement be accepted as true and accurate record:

Proposed: C Norville.

Seconded: B Steele

7. Other business.

There being no formal agenda items, the meeting was opened for general discussion.

J Lennane advised she had been elected to the NRMA Board and was looking forward to her new role as in-house whistleblower.

B Taylor was critical of the national group's handling of his resignation as Editor of the Whistle. J Lennane explained that the Executive had done the best it could at the time.

C Kardell expressed the view that Bob's complaints could not be dealt with as the majority of members present had no knowledge of the circumstances. She suggested that he provide the Secretary with his submission for prior circulation and later inclusion at the next AGM. Bob acquiesced.

J Lennane advised G McMahon, National Director, has re-edited the brochure entitled "National Whistleblowers of Significance" — a fresh batch to be available soon. She urged those present to let him know their requirements. Further, that he has asked whether we should have another project and if so, what and whether we wanted him to pursue Government funding for it.

J Lennane stated that generally she is not keen on government funding as it compromises our independence. K Wolf noted that the existing brochure included only unsuccessful whistleblowers and suggested a further brochure featuring successful whistleblowers in different environments such as government, universities etc. B Martin pointed out that the lack of success was central to our call (in the existing brochure) for a national protection body

Subsequent opinions expressed by inter alia, [several of those attending] explored the wider question of whether success was the issue and the many ways of advancing the cause of whistleblowing ... having run out of time, the initial question was left for another day.

Finally, J Lennane thanked all those present for attending and asked them to express their appreciation in the usual way for the meeting's organisers and in particular, for G Turner, who made it again possible for interstate members to attend by teleconference link.

Meeting closed 2pm.

Whistleblowers Australia contacts

New South Wales

"Caring & Sharing" meetings We listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night 7:30 p.m., Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.

General meetings held in the Church Hall on the first Sunday in the month commencing at 1:30 p.m. (or come at 12:30 p.m. for lunch and discussion).

Contacts: Cynthia Kardell, phone/fax 02 9484 6895, or messages phone 02 9810 9468; fax 02 9555 6268.

Goulburn: Rob Cumming, 0428 483 155. *Website:* <http://www.whistleblowers.org.au>

Wollongong: Brian Martin, 02 4221 3763. *Website:* <http://www.uow.edu.au/arts/sts/bmartin/dissent/>

Queensland contacts: Feliks Perera, phone/fax 07 5448 8218. Also Whistleblowers Action Group contact: Greg McMahon, 07 3378 7232 (a/h).

South Australian contacts: Matilda Bawden, 08 8258 8744 (a/h); John Pezy, 08 8337 8912

Tasmanian contact: Isla MacGregor, islamacg@southcom.com

Victorian contacts: Anthony Quinn 03 9741 7044 or 0408 592 163; Christina Schwerin 03 5144 3007; Mervin Vogt, 03-9786 5308.

Western Australian contacts: Avon Lovell, 08 9242 3999 (b/h); John White, 08 9382 1919 (a/h).

Jan ter Horst revisited

Readers with long memories will remember an article by Lionel Stirling in the December 1997 issue of *The Whistle* about the Jan ter Horst case. The following story gives an update.

Battler's home win

by Jim Kelly, *Sunday Times* (Perth), 25 November 2001

AN independent probe into a 14-year strata title battle in Beaconsfield has backed the claims of a man dismissed by authorities as an obsessed eccentric.

Jan ter Horst has been fighting for more than a decade to prove a strata home built in his backyard exceeded the maximum height limit — and that Fremantle City Council was at fault.

The Sunday Times has been told a Department of Local Government Investigation into the saga has found in Mr ter Horst's favour.

The council-commissioned probe, completed last week but being kept under wraps by the City of Fremantle, could provide a springboard for a multimillion-dollar compensation claim.

It is understood the report is critical of council staff, who are alleged to have given councillors wrong information, either through ignorance or to mislead them.

Mr ter Horst has endured a family break-up and spent a WA record 91 days in jail for contempt of court fighting what he maintained was an injustice caused by council bungling.

The saga began in 1987 when he sold half his block in a deal which was dependent on the strata home complying with a maximum height limit.

Mr ter Horst claimed the council allowed the house to exceed the limit and obscure his panoramic view of Fremantle.

He was dragged through the courts for refusing to surrender the strata title, which he claimed could not be released until the building complied with the height restriction. [...]

Whistleblowers Australia membership

Membership of WBA involves an annual fee of \$25, payable to Whistleblowers Australia. Membership includes an annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/discussion groups, plus input into policy and submissions.

If you want to subscribe to *The Whistle* but not join WBA, then the annual subscription fee is \$25.

Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone./Fax 07 5448 8218.

The activities of Whistleblowers Australia depend entirely on voluntary work by members and supporters. We value your ideas, time, expertise and involvement.

Whistleblowers Australia is funded almost entirely from membership fees, donations and bequests.