

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

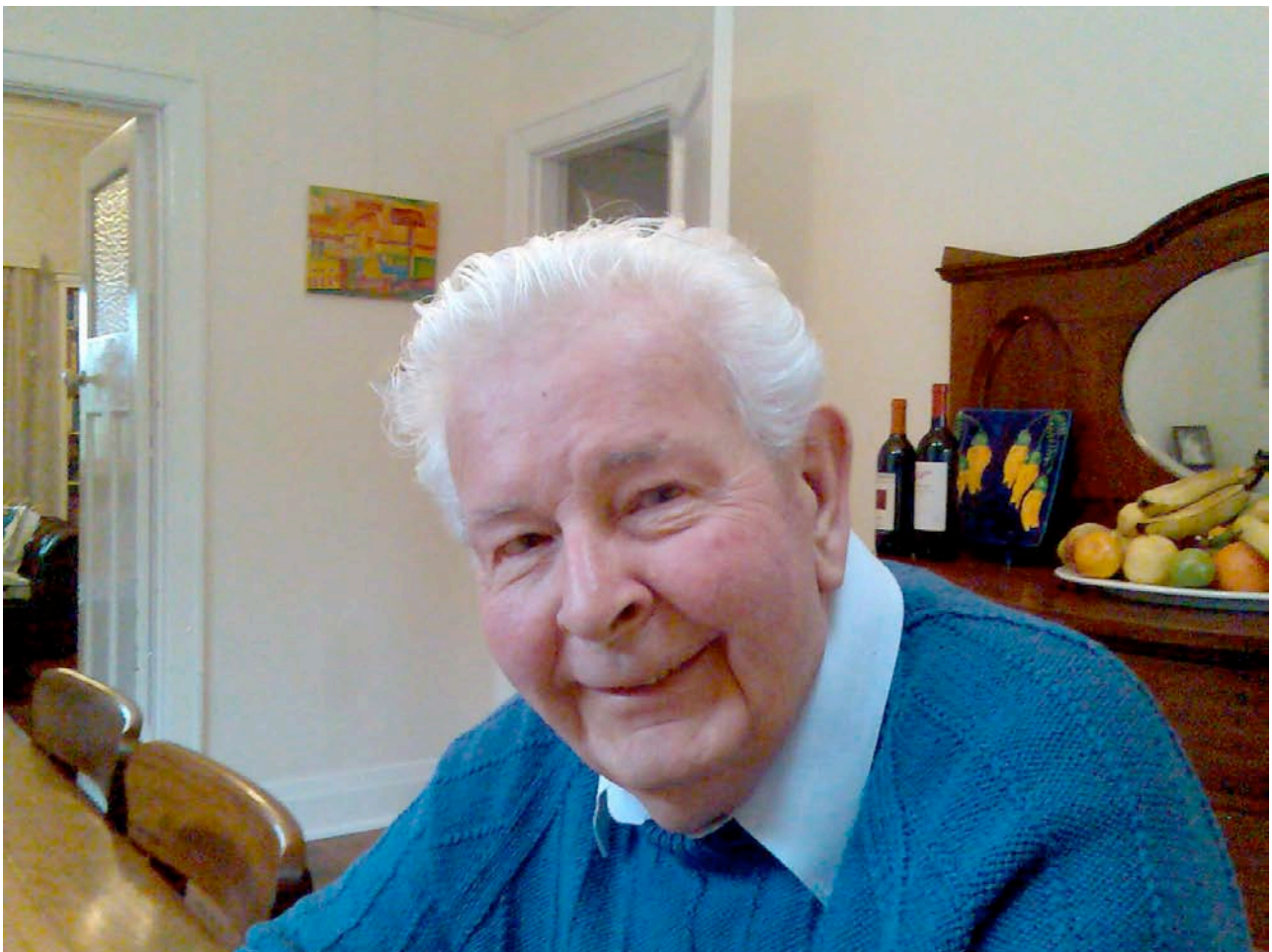
# *The*



# *Whistle*

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Newsletter of Whistleblowers Australia



**Keith Potter, whistleblower advocate, 1926–2012**

### Whistleblower defeats Japan Inc. for first time

*Japan Times*, 1 July 2012

THE Supreme Court has ruled for the first time in favor of a whistleblower, in a case that highlights the harsh treatment outspoken Japanese employees endure in a nation that zealously values loyalty and conformity.

Despite being a good salesman with experience in the United States, Masaharu Hamada, 51, was demoted at Olympus Corp., forced to take rudimentary tests and ignored by colleagues in what he alleged was reprisal for raising the issue of supplier complaints.



Masaharu Hamada

He received a notice Saturday from the Supreme Court, dated Thursday, dismissing Olympus' appeal against a 2010 lower court decision and sealing victory for a regular salaryman against a giant of Japan Inc.

"We need a society where honest, hard-working people don't lose out," Hamada said. "This is about justice and human rights."

Hamada's story highlights how workers labeled as misbehaving are punished in a society where major businesses such as Olympus offer lifetime employment. Employees like Hamada become targets of cruel harassment designed to silence them or make them quit. He was nearly driven to a breakdown during his five-year battle.

Japan lags behind some Western nations in protecting whistleblowers. A law to protect them was not enacted until 2006, and critics say it is inadequate because it does not penalize companies that punish employees who blow the whistle. To pursue legal action, such workers are unable to quit from their firm as the law only applies to employees.

Only a handful of whistleblowers has come forward in the past few decades. When they do, they are treated as outcasts, sometimes being told to sit in closet-size offices or to mow lawns. Even their children become victims of discrimination sometimes, so abhorred is the worker who dares to question their all-mighty employer.

Hamada sued Olympus in 2008, saying he was being punished for relaying a supplier's complaint that its best employees were being lured away by the medical equipment maker. Olympus said he was merely transferred, not demoted.

He is considered a whistleblower because he went first to his bosses and then to the company's compliance unit, trying to raise questions about the professional behavior of colleagues for the public good, and, as the Supreme Court found, was punished with retaliatory action.

Last year, the Tokyo High Court reversed an earlier district court decision and ordered Olympus to pay Hamada ¥2.2 million in damages for the transfer. Olympus appealed the ruling.

In the past, the company has described the court rulings favoring Hamada as "regrettable."

Olympus was targeted recently by another high-profile whistleblower, Michael C. Woodford, its former British CEO.

Woodford was fired in October after he blew the whistle on a dubious accounting scheme. The company later acknowledged it hid ¥117.7 billion in investment losses and three of its former executives, including an ex-chairman, were arrested earlier this year on suspicion of orchestrating the cover-up.

But Woodford has become a hero. Last month, he won a ¥1.2 billion settlement from Olympus in a British court over unlawful dismissal and discrimination.

How Hamada will be treated at Olympus on Monday remains unclear. He plans to show up at work at 8:45 a.m. as usual, as he is confident he is an upstanding "Olympus man."

Hamada would like to be moved to the corporate compliance division, given the serious problems that surfaced amid the Woodford case and the knowledge he has gained about proper management through his court battle.

"I would like to work for the true revival of Olympus, where dedicated employees can work and feel joy in a nurturing environment, and be proud," he said.

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### Whistleblowers at CSIRO forced out and "bullying rife"

Linton Besser  
*Sydney Morning Herald*  
18 September 2012, p. 5

TWO of three CSIRO employees who blew the whistle on alleged "criminal or civil breaches of the law" by the scientific organisation were later made redundant, it has been revealed.

But those officials who were the subject of the complaints remain employed, the CSIRO has confirmed.

The details have emerged after a group of former CSIRO employees began a campaign for a change in culture at the science agency, alleging mismanagement and bullying are rife.

Last Thursday, a parliamentary inquiry examining workplace bullying in Commonwealth agencies published the group's submission. It claims the group is aware of 60 cases involving top-flight scientists and other officials who were bullied or otherwise forced out of the organisation.

This list has names on it such as Maarten Stapper, a soil scientist allegedly pushed out because of his criticism of genetically modified crops,



globally recognised oceanographer Trevor McDougall, and award-winning entomologist Sylwester Chyb, who has begun litigation against the CSIRO for misleading conduct and unlawful termination.



Maarten Stapper



Trevor McDougall



Sylwester Chyb

The CSIRO has declined to respond to the allegations, but the group says some of those forced out had tried to report misconduct or maladministration. Among the group's recommen-

dations is improved protection for whistleblowers.

"Current whistleblower legislation does not adequately protect from persecution those making public interest declarations," the document says. "This is particularly true in circumstances in which it is hard to identify a direct link between a whistleblower complaint and subsequent, seemingly unrelated adverse action against the employee in his or her workplace."

The organisation is also grappling with a spike in the damages it has had to pay as a result of occupational health and safety claims made to the Commonwealth OH&S regulator and insurer, Comcare. The increased costs of the claims has meant that the premiums Comcare charges the CSIRO have nearly tripled from \$1.9 million in 2011-12 to \$4.9 million this financial year.

"The CSIRO has consistently achieved lower than average claim frequency and claim cost but has had an upward trend in the average cost of its claims," a Comcare spokesman, Russ Street, said.

At a budget estimates hearing in May, the Tasmanian senator David Bushby asked the CSIRO about its handling of whistleblower complaints and those who made them. In answers provided last month, the organisation confirmed two complaints were lodged in 2010 and one in 2008, all of which made serious allegations about unlawful activity.

But while the CSIRO did not retrench any of those against whom allegations were made, it did retrench the complainants.

"One CSIRO employee, who had lodged a whistleblower complaint on March 10, 2008, was made redundant on August 23, 2010, as there was an insufficient volume of current and projected work to sustain the position," the CSIRO said.

"A second employee, who lodged a whistleblower complaint on February 23, 2010, was made redundant on September 4, 2011 as CSIRO no longer required the job be performed by anyone because of changes in the operational requirements of CSIRO's enterprise."

A CSIRO spokesman, Huw Morgan, declined to describe the

nature of the allegations made by the whistleblowers, saying it could help reveal their identities.

## Whistleblower who brought Queensland University of Technology nepotism scandal to light made redundant

Mark Solomons

*Courier-Mail*, 5 July 2012

THE University of Queensland has made redundant the whistleblower who brought to light the nepotism scandal that cost the Vice-Chancellor Paul Greenfield and his deputy their jobs last year.

Phil Procopis, the institution's top misconduct and fraud investigator, left the university this week after 18 years' service.



Phil Procopis

*The Courier-Mail* can reveal that it was Mr Procopis who first brought the affair to the attention of senior officials including the Chancellor, John Story.

The newspaper understands that Mr Procopis went to the Chancellor in early September after stumbling across the irregular admission of a close relative of Mr Greenfield to the university's medical faculty while investigating an unrelated matter.

Mr Story then launched an investigation, the results of which have never been made public.

UQ confirmed Mr Procopis had had "an initial role in passing the complaint to the Chancellor" on September 9.

Mr Procopis declined to comment.

Friends and colleagues said he was a man of integrity who fiercely guarded his department's independence.

"He's a truth-speaker," one said.

Mr Procopis's redundancy and the disbanding of his department comes despite Mr Greenfield's replacement, Professor Deborah Terry, announcing on May 17 that Mr Procopis would have a central role in misconduct matters under a package of governance reforms.

Prof Terry told *The Courier-Mail* this week that, at the time of her May announcement, "the proposed reorganisation of ARMS had not been finalised".

She said the restructuring was the result of a "routine, cyclical" review initiated before the admissions scandal and had been done with the blessing of the CMC.

Mr Procopis's post is the only one to have been cut.

But, Prof Terry said, "it would be inaccurate and wrong" to link the role of Mr Procopis in unearthing the scandal to his redundancy.

"Our code of conduct encourages staff to report matters like this to the appropriate university or external authorities, and as a senior person responsible for assurance and risk management, it would have been a problem had he not communicated it," she said.

The CMC is due to table in Parliament a report into the UQ admissions scandal in the coming weeks.

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## ATO whistleblower in court: "they sabotaged my complaints"

Chris Seage, tax consultant and former ATO audit manager  
*Crikey*, 20 September 2012

A SENIOR lawyer in the Australian Taxation Office has sensationally claimed that high-ranking senior executive service officers within the bureaucracy sabotaged her whistleblower complaint and demanded she see a psychologist within five weeks of lodging the complaint.

Serene Teffaha, a senior tax technical specialist of 12 years standing, is suing the ATO in the Federal Magistrates Court under the *Fair Work Act* 2009, alleging eight adverse actions as a result of lodging a whistleblower complaint she was entitled to make under the *Public Service Act*. The

allegations in the court writ, obtained by *Crikey*, calls into question whether amendments to the public service whistleblower protection laws currently before the parliament are strong enough to protect whistleblowers.

In 2011, Teffaha and four other senior colleagues lodged the whistleblower complaint with David Diment, a first Assistant Commissioner of Taxation, alleging various issues about the conduct of the ATO's high-profile pursuit of high-wealth individual Australians worth between \$100 million and \$250 million a year. Some of the issues identified lack of resourcing in the area to handle the large volume of objections to the assessments as a result of audit action and the lack of technical knowledge held by ATO staff to properly deal with complex matters emanating from the audits.

The complainants believed that taxpayers were being disadvantaged by not having their issues dealt with in a fair and professional way. At risk were current and imminent objections her team was involved in where the tax in dispute was nearly half a billion dollars in revenue. After the whistleblower complaint was lodged, Teffaha and the other complainants allege they have been the subject of bullying by tax office big wigs. Teffaha has been on stress leave since last year and has not returned to work.

In a bizarre twist to the saga, *Crikey* understands that last month the ATO made an offer of \$250,000 cash as a settlement offer to Teffaha on the condition she withdraw her court action. In an email from a senior officer to Teffaha, of which *Crikey* has a copy, he says:

If you wanted to be put in the same financial position as you would have been had you drawn a salary for 3 years then my understanding is that would be the equivalent of around \$250,000 "cash in hand" today. The fact that I have worked closely with you and have seen first-hand the qualities you can bring to the workplace means that I am in a very good position to provide you with the statement/reference. Ultimately I think that statement may be of greater assistance to you in rejoining the

workforce in a job you're well-qualified for than the outcome of any court proceedings.

Anyway, let's keep the channels of communication open and continue our constructive discussions about this matter. I'm really glad we can talk about this because, frankly, I think it's only the lawyers that would benefit if we keep going down the formal, legal path. And I think the sooner we can bring this to a mutually acceptable conclusion, the better it will be.



Serene Teffaha

Teffaha rejected the offer as she did not consent to the ATO condition barring her from taking personal litigation against ATO senior officials including David Diment. Teffaha told *Crikey*: "The Commonwealth and its agencies are entering into confidentiality and release agreements designed to exonerate senior public officials from their unlawful conduct using taxpayers' funds. This is a serious breach of the Commonwealth Model Litigant Rules."

Within five weeks of lodging the complaint, the ATO wanted to refer her to a psychologist and within eight weeks she was referred to a psychiatrist due to the belief she was suicidal. In April 2011 Assistant Commissioner Toni Balik met with Teffaha and the other complainants and expressed the view she was suicidal, according to the court document. Teffaha denies the allegation that she made any threat of self-harm then or at any other time. She told *Crikey* that four other complainants at the meeting would dispute the claim.

The court document alleges that Diment:

- Has seriously breached the relevant laws, policies and procedures in handling a whistleblower investigation by carving out significant points from the complaint and commissioned a formal external investigation into the substance of the allegations
- Assigned Margot Rushton, Assistant Commissioner, from the same area of the alleged wrongdoers to handle the WB complaint without Teffaha's consent
- Conspired with others to fix the outcome of the whistleblower complaint before investigation (the pre-determined decision that there was no substance to the allegations was handed down on September 8, 2011)
- Singled her out from the other complainants and told her not to enter ATO work premises while the investigation was taking place.
- Bruce Quigley, a second Commissioner of Taxation and the second-highest ranked officer in the ATO, promised Teffaha a permanent transfer out of the problem area but Deputy Commissioner Greg Williams, assistant Deputy Commissioner Richard Collis and Rushton sought to deny Teffaha this permanent transfer and insisted she remain in her position, reporting to them, while she was experiencing hostility and bullying from them.

Teffaha says the public interest disclosures made in the whistleblower complaint have since been validated by the Inspector General of Taxation's review into the ATO's compliance approach to small business released on April 24 this year.

When confronted with bullying and being victimised, Teffaha turned to Tax Commissioner Michael D'Ascenzo for help. In May 2012 she wrote an impassioned letter telling him:

As a committed public servant, when I saw issues that undermine the integrity and work practices of the ATO, I tried to do my part to flag and improve the issues. As a result, the ugly, abusive managerial style currently entrenched in the ATO culture was laid bare for all to see ...

In an attempt to resolve the various issues that confronted me, I reached out to a number of external scrutineer agencies including the Australian Public Service Commission, Comcare and the Fair Work Ombudsman. Unfortunately, I discovered that they are part of this process of abuse and have collaborated in protecting the perpetrators. Whistleblowers need scrutineer agencies with meaningful powers to intervene and make authoritative decisions, when necessary.

D'Ascenzo has never responded. Shane Reardon, the acting-second Commissioner of Taxation, told *Crikey*:

The ATO cannot comment on individual employee matters or circumstances. In particular it is not appropriate in this case as the matters detailed in the complaint are currently the subject of proceedings before the Federal Magistrates Court. We have a detailed guide for our staff (a Corporate Management Practice Statement) which sets out how the ATO manages whistleblowing.

Protection for whistleblowers is covered under section 16 of the *Public Service Act*. It states that an employer must not victimise, or discriminate against, employees because they have reported breaches (or alleged breaches) of the code of conduct to them. Amendments currently before Parliament increase the powers of the Australian Public Service Commissioner to determine complaints, other than whistleblower complaints, which ironically continue to be determined by agencies. Effectively, whistleblower protections remain unchanged.

Teffaha today remains on stress leave without pay. She says the ATO refuses to suspend or sack her, nor make any finding of misconduct against her. She is surviving on savings and with the help of her family while she waits for the commencement of her court action.

"The whistleblower laws are a joke," she said. "If someone had told me the truth back then, I wouldn't have lodged the darn thing. But I don't regret what has happened. The community has a right to expect that

public service agencies that serve them don't sweep information under the carpet and don't engage in conduct of this type against dedicated and professional employees. I am committed to realising this expectation."

## US drug agency spied on scientists

**Food and Drug Administration monitored five employees, defying promises about whistleblower protection.**

Meredith Wadman  
*Nature*, 25 July 2012

UNTIL last week, the US Food and Drug Administration (FDA) had been remaking its image as a transparent organization that was supportive of its scientists, even when they spoke out against its decisions.

Now the agency is on the defensive, after the exposure of a clandestine computer-surveillance operation that tracked every keystroke made by five dissident FDA scientists whom it suspected of leaking confidential internal data to the press. The revelation may damage employees' trust in the FDA, and erode their willingness to challenge the decisions of their bosses, say expert observers. "The mere act of monitoring e-mails can chill scientific discourse at the agency and leave scientists more vulnerable to retaliation," says Michael Halpern, the integrity programme manager at the Union of Concerned Scientists (UCS), an advocacy group based in Cambridge, Massachusetts.

UCS surveys of more than 900 FDA scientists had shown that the proportion who feared retaliation for openly expressing concerns about the agency's work fell from 36% to 26% between 2006 and 2011. In the same period, the proportion who said that their supervisor "stands behind scientists" who put forth controversial views climbed from 38% to 61%. And when the agency issued a scientific-integrity policy in February, "supporting whistleblower protections" was on a list of key principles. Another principle read, "Allowing FDA staff to communicate their personal scientific or policy views to the public, even



when those views differ from official Agency opinions.”

Critics say that the surveillance campaign strikes at the very heart of those principles. In addition to monitoring keystrokes, the FDA used software to capture all data stored on the computers and on USB sticks, and all e-mails sent and received on the computers, whether using personal or government accounts. The software also took screenshots at five-second intervals. Writing to FDA commissioner Margaret Hamburg last week, Senator Charles Grassley (Republican, Iowa), who is investigating the surveillance, alleged that the operation had been “explicitly authorized, in writing” by the FDA’s head lawyer. The agency gathered more than 80,000 pages of information during the operation, says *The New York Times*, which first disclosed the extent of the surveillance on 14 July.



Charles Grassley

The scientists, who worked in the FDA’s Center for Devices and Radiological Health in Silver Spring, Maryland, first began to speak out in 2008, telling the US Congress that the agency’s process for reviewing medical devices was “corrupted.”

An article about a breast-cancer imaging device in *The New York Times* in January 2009 was followed by one in March 2010 that quoted an internal review by one of the scientists. The review cautioned against the FDA’s potential approval of a colon-cancer screening device that the scientist believed delivered dangerous levels of radiation.

#### Under surveillance

The US Food and Drug Administration (FDA) monitored employees after they voiced concerns about imaging devices.

• 28 March 2010: *The New York Times* says that FDA managers suppressed scientists’ concerns about radiation risks from routine colon-cancer screening.

• 16 April 2010: GE Healthcare alleges that confidential proprietary information had been leaked.

• 22 April 2010: The FDA starts to put spyware on scientists’ computers.

• July 2010–October 2011: Four monitored scientists lose jobs.

• 25 January 2012: Scientists sue the FDA for violating their civil rights.

• 14 July 2012: *The New York Times* reports that the FDA has amassed more than 80,000 documents during the surveillance campaign.

• 16 July 2012: Senator Charles Grassley calls for investigation.

The FDA says that the disclosures to the newspaper were illegal under the Federal Food, Drug, and Cosmetic Act, which prohibits the agency from publicizing data and information submitted by a drug- or device-maker before marketing approval has been granted — even the existence of an application cannot be disclosed. GE Healthcare of Little Chalfont, UK, had applied to have a device approved for routine colon-cancer screening among people without symptoms — a huge and lucrative market. After the 2010 article appeared, the company wrote to the FDA asking it to investigate how, as *The New York Times* had reported, “scores of internal agency documents” concerning its application had been leaked to the newspaper.

In a letter to Grassley on 13 July, the FDA said that it began monitoring the scientists’ government-owned computers in April 2010. Erica Jefferson, a spokeswoman for the agency, said that the monitoring “was only intended to identify the source of the unauthorized disclosures, if possible, and to identify any further unauthorized disclosures.” By the end of 2011, four of the five scientists had been fired or had not had their contracts renewed. Ewa Czerska, who had been at the agency for 23 years, was dismissed “for unauthorized disclosure of confidential information,” the agency wrote in its letter. It did not describe its reasons for terminating the others’ employment.

The scientists sued the FDA in January, claiming that the agency had violated their rights to free speech and

association, their right to petition Congress and their right to be protected from unreasonable search and seizure. In a revised lawsuit filed last week, they also allege that the monitoring actually began in 2009, and that “the FDA intercepted private e-mails that were composed during non-work hours, from home, on personal networks and non-government computers.” Jefferson says that the monitoring was limited to the five employees’ government-owned computers; Hamburg declined to be interviewed.

The captured documents include personal communications, among them lawyer–client exchanges, as well as letters to Congress and the government’s Office of Special Counsel, which investigates whistleblower complaints and is meant to protect whistleblowers from retaliation. “This case is different from any we have seen in the past because of the sweeping and pervasive nature of the surveillance conducted, and because the scientists were using laptop computers both at home and at work for a variety of personal and private purposes,” says Alan Butler, a privacy-law expert at the Electronic Privacy Information Center in Washington DC.

“These employees are properly going to members of Congress or the Office of Special Counsel and they are being retaliated against, presumably as a result,” says Mark Zaid, a lawyer in Washington DC, who specializes in defending whistleblowers. “It sends a chilling message.”

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## Whistleblowers join forces to set up

### support organisation

**Whistleblowers at the centre of two of Britain’s highest profile corporate bribery investigations have joined forces to create a support group for people in the same situation.**

Angela Monaghan

and Jonathan Russell

*The Telegraph* (UK), 26 August 2012

IAN Foxley, whose allegations have prompted a Serious Fraud Office investigation into payments made by a subsidiary of defence giant EADS, and Peter Gardiner, who blew the whistle

on BAE a decade ago, have formed Whistleblowers UK.

Mr Foxley will chair the group which is designed to provide psychological and practical support for people who have found their life in disarray after reporting alleged malpractice. “You don’t plot to be a whistleblower. It just happens, and then all of a sudden it explodes,” said Mr Foxley, the retired lieutenant colonel who was appointed in 2010 to oversee a £2bn military communications project for GPT in Saudi Arabia.

Andrew Tyrie MP, chairman of the Treasury Select Committee, welcomed the creation of Whistleblowers UK, following his recent acknowledgement that there may be problems with UK policy on the matter. In a report published on the Barclays Libor scandal, Mr Tyrie said: “The FSA may also need to re-examine its treatment of whistleblowers, both corporate and individual, in order to provide the appropriate incentives for the reporting of wrongdoing.”

His statement came after it became clear that despite a number of Barclays traders and senior executives being aware the bank was attempting to fix the interbank lending rate, no one acted. Mr Tyrie said he and the Banking Commission he is chairing would be keen to hear from Whistleblowers UK. “I have no doubt that the Banking Commission will want to look at this issue [whistleblowing] carefully and will welcome evidence,” he said.

The challenge would be to create an environment where whistleblowing is appropriately protected but not unduly encouraged. Mr Foxley fled Riyadh just seven months into his work after uncovering what he claims amount to bribes paid to Saudi officials by GPT to ensure the smooth passage of the contract.



Ian Foxley and Peter Gardiner

## Whistleblower awarded \$104 million by IRS

David Kocieniewski

*New York Times*, 11 September 2012

SOMETIMES, crime does pay.

Bradley C. Birkenfeld, a former banker at UBS, recently served two and a half years in prison for conspiring with a wealthy California developer to evade United States income taxes.

But Mr. Birkenfeld, 47, has a lot to show for his time and effort: the Internal Revenue Service acknowledged on Tuesday that information he had provided was so helpful that he would receive a \$104 million whistleblower award for revealing the secrets of the Swiss banking system.

By divulging the schemes that UBS used to encourage American citizens to dodge their taxes, Mr. Birkenfeld led to an investigation that has greatly diminished Switzerland’s status as a secret haven for American tax cheats and allowed the Treasury to recover billions in unpaid taxes.

In addition to paying \$780 million in 2009 to avoid criminal prosecution, the bank turned over account information regarding more than 4,500 American clients.

The disclosure of Swiss banking information — which caused a fierce political debate in Switzerland before winning approval from the country’s Parliament — set off such a panic among wealthy Americans that more than 14,000 of them joined a tax amnesty program. IRS officials say the amnesty program has helped recover more than \$5 billion in unpaid taxes.

Mr. Birkenfeld’s award, the largest ever paid by the IRS, is also a milestone for the agency’s whistleblower program, which offers informants rewards of up to 30 percent of any fines and unpaid taxes recouped by the government.

The program was revamped in 2006, offering higher rewards and more incentives for citizens to report tax dodges, in an effort to help recover more of the estimated \$100 billion a year in underpaid taxes. But the program has been dogged by bureaucratic delays and institutional resistance within the IRS, causing some

members of Congress to complain that it was being undermined.

Though Mr. Birkenfeld’s \$104 million award is far less than the billions he sought, its sheer size — more than \$4,600 for every hour he spent in prison — could spur a surge in new whistleblower complaints.

“The I.R.S. sent 104 million messages to whistleblowers around the world — that there is now a safe and secure way to report tax fraud,” said his lawyers, Dean A. Zerbe and Stephen M. Kohn, in a written statement.

Mr. Birkenfeld is an unlikely crusader for tax fairness. A native of Massachusetts who studied banking at the American Graduate School of Business in Switzerland, he spent five years recruiting American clients for UBS — which managed some \$20 billion in assets for Americans — before reporting the bank’s schemes to the Treasury Department. Mr. Birkenfeld also admitted in court that he once smuggled diamonds for a client in a tube of toothpaste.

He said he learned in 2005 that the bank’s advice to clients was illegal, and after reporting it to the UBS compliance office to no avail, he decided to become a government informant.

During the investigation Mr. Birkenfeld was charged with fraud for withholding crucial information from federal investigators, including details of his top client, the property developer Igor Olenicoff. Mr. Birkenfeld was sentenced to 40 months in prison, and was released early on Aug. 1.



Bradley Birkenfeld

While the program allows the IRS to grant whistleblowers as much as 30

percent of the money they recover, some federal officials urged the IRS to invoke a rule that allows them to deny an award to informants who withhold information or engage in illegal activity. But Mr. Birkenfeld, whose exploits landed him on “60 Minutes” and the front pages of newspapers around the world, cut such a high profile that many lawyers worried that the IRS might scare off potential whistleblowers if he ended up empty-handed, with nothing more to show for his efforts than a criminal record.

Michael A. Sullivan, a partner at Finch McCranie in Atlanta, applauded the agency’s decision.

“It heartens those who deal with whistleblowers daily to see the IRS simply follow the law and reward a whistleblower who meets the law’s requirements,” he said.

Since the law was strengthened in 2006, it has spawned a cottage industry of whistleblower lawyers and private investigators. They have generated hundreds of claims alleging tens of billions of dollars in tax evasion. In a few cases, hedge funds have actually invested in the cases, paying whistleblowers cash up front in exchange for a percentage of any award they ultimately collect.

Michelle Eldridge, a spokeswoman for the tax department, said the IRS believed that the whistleblower statute provided a valuable tool to combat noncompliance, and that “this award reflects our commitment to the law.”

But others say that delays are costing taxpayers billions. With lengthy delays in processing cases, the whistleblower program had a decline in both new cases reported and tax dollars collected in 2011.

Senator Charles E. Grassley, an Iowa Republican who helped write the law, said Mr. Birkenfeld’s award was an important step, but urged the IRS to build on the momentum it had generated. “If the I.R.S. is serious about encouraging future whistleblowers, it needs to continue to honor the spirit and intent of the law and issue awards in a timely manner,” Senator Grassley said.

Mr. Birkenfeld’s lawyers declined to say how much of the award they would collect. But his \$104 million payout is fully taxable as regular income.

## Whistleblower banker awarded \$104m

ABC Radio National Law Report, 18  
September 2012

FIVE years ago US expatriate banker Bradley Birkenfeld blew the whistle on his then employer, the United Bank of Switzerland (UBS). Since then his testimony has uncovered 19,000 US tax cheats. His own role in the banking practices at UBS didn’t go unpunished — Birkenfeld is currently serving a jail sentence for fraud. But just last week Birkenfeld was awarded over \$US100 million by the IRS for assisting them. With serious criminal penalties on the one hand, and financial enticements on the other, is it time for a new approach to people who blow the whistle?

[edited transcript]

**Damien Carrick:** Hello, welcome to the *Law Report* ... First to the biggest monetary pay amount ever awarded to a whistleblower.

**Dean Zerbe:** Today is a great day for whistleblowers, today is a great day for ...

**Reporter:** The reward for information used to catch tax cheats has just gone up. US authorities have awarded Bradley Birkenfeld \$104 million, the biggest payment to a single American whistleblower.

**Reporter:** How unusual is it for a Swiss banker to come forward and say, “This is how it works”?

**Bradley Birkenfeld:** It’s never happened before in history, I’m the first one.

**Damien Carrick:** Whistleblower Bradley Birkenfeld, the first one to break the code of silence on a giant tax avoidance scam at Swiss bank UBS. Last week in gratitude for spilling the beans, the US tax office, the IRS, announced that it will pay Birkenfeld a whopping US\$104 million. Under a number of US laws, including the 2006 IRS Whistleblower Reward Statute and the much older False Claims Act, American whistleblowers can claim a percentage of any money that they help recover by exposing corrupt practices.

Kim Sawyer is a well-respected whistleblower. He’s also a former associate professor in economics and finance at the University of Melbourne. Kim Sawyer welcomes the

news of the giant payout to Bradley Birkenfeld, the dodgy banker who turned to the good side.



Kim Sawyer

**Kim Sawyer:** He was a manager within a unit in Switzerland for UBS, one of the largest banks in the world. The ... UBS had a scheme going where Americans would put money in Swiss bank accounts hidden from US authorities, so in other words they were avoiding tax, and up to about \$20 billion was identified in that account. Now, Bradley worked for them for about four years, he became aware of a ruling in 2005 that showed the practice was actually illegal, and was a violation of a compliance contract of UBS with the IRS in the United States. As a result he raised it with the compliance officer with UBS, he resigned, he then took it to legal authorities within the UBS and then finally he took it to the Department of Justice in the United States. He was prosecuted, he asked for immunity from prosecution, from the Department of Justice, in 2007. He wasn’t given that, they prosecuted him, he went to prison for it, sentenced to 40 months’ jail, but he was a whistleblower, he filed a claim under the False Claims Act in the United States. This \$104 million is for that.

**Damien Carrick:** Can you just tell me what the dimensions are of this tax scam and what him coming forward meant for US tax authorities?

**Kim Sawyer:** Sure, well as a result of the action with UBS the IRS received a payment from UBS, a fine if you like,



of \$780 million, but they also recovered as part of that action, in terms of the court, there were about 5,000 taxpayers in the United States identified as having put money into accounts in Switzerland, but because of the action taken at the time, a further 14,000 taxpayers came forward. So 19,000 in all came forward, and of course that led to a tax payment to the United States of \$5 billion.



**Damien Carrick:** Five billion dollars?

**Kim Sawyer:** Yes, but that is only the tip of the iceberg; it's estimated in ... Senate estimates in the United States that there's \$5 trillion worth of American assets in overseas accounts not being taxed, and that's what the government is after, and as a result of the UBS action there are now 11 banks under investigation, and that's why this payment. It looks extraordinary for one individual, but in terms of the wider context it is a very strong signal that whistleblowers in other banks and in other domains will be protected and will reveal the information that will [help] unravel that \$5 trillion of assets which is held overseas and which is not being taxed.

**Damien Carrick:** Bradley Birkenfeld received this \$104 million under legislation, which I think was passed in 2006, and it's specific to tax in the USA. Have there been other payouts under this legislation before?

**Kim Sawyer:** Yes, under the IRS there's been significant payouts now over the five years, and I think the largest year was 2011, the largest number of payments to whistleblowers under that act was certainly in excess of \$500 million.

**Damien Carrick:** And this IRS legislation is part of a long tradition in the USA of rewarding whistleblowers who come forward. A very different tradition from ours, we have nothing like this in Australia. Tell me about that tradition.

**Kim Sawyer:** Well, we need to understand, corruption is probably the largest economic problem. It gets well disguised, but for an average company, for an average government, five per cent of revenue is defrauded at minimum. That's a conservative estimate, which is agreed on by most bodies throughout from the UN to UNESCO to OECD or whatever. It needs to be combated. There are two ways to regulate: you can have mandatory regulation, which is what we have in Australia, or market-based regulation. The studies in the US, there have been many studies, in *The Journal of Finance* and other places, which show that market-based regulation is increasingly effective. In other words, it's 70 to 80 per cent effective, whereas mandatory regulation's only 20 per cent effective.

**Damien Carrick:** What do you mean by markets regulation versus mandatory regulation?

**Kim Sawyer:** ... Market-based regulation requires individuals who have specific information through their market activities to reveal that information to regulators, rather than regulators trying to oversee it from above. It's people within who are operating day to day. Inside information is what it's all about, and whistleblowers are the key. You cannot expect whistleblowers to provide that information without any compensation, because the history of whistleblowing shows that if whistleblowers do reveal that information they are persecuted for it; they're discriminated against, they typically lose their jobs, they lose their careers, and that is universal ... There was only a case revealed last week in Australia of a whistleblower in the issue related to the current problems of the Reserve Bank of Australia, clearly has been told to keep quiet, and clearly been forced out of his position. That's his allegation, that he was forced out because of issues to do with the Secrecy and the bribery scandal.

That is a common phenomenon; all the false claims acts and the Bradley Birkenfeld case show is that whistleblowers must be compensated for the risks they take. Now, the cost to them is huge. Now, the society has to weigh up at a macro level whether it's more important to root out the corruption or

to destroy the whistleblowers; that's the choice.

**Damien Carrick:** Kim Sawyer, did Bradley Birkenfeld come to the authorities with clean hands?

**Kim Sawyer:** In his case there's always going to be a muddying of the waters, because he has been prosecuted for not cooperating with the authorities at one level, but he did ask for immunity from prosecution to reveal a much bigger problem.

**Damien Carrick:** They didn't give it to him, though. They must've felt that he had done something seriously bad and he deserved to go to prison for 30 months, sentenced to 40, served 30.

**Kim Sawyer:** ... it's an interesting point. There have been many criticisms of the Department of Justice and their ruling in this particular case and the fact that they went ahead and prosecuted. I think five years later you might think they wouldn't do it again, because I think they're starting to realise that whistleblowers have to be given some incentives and protections, and I see this \$104 million payment as actually a redress for that prosecution.

**Damien Carrick:** There is ambiguity here. I mean, are we rewarding someone who's simply made a financial calculation that it is financially in their best interests to leave the dark side, to take advantage of these whistle-blowing laws?

**Kim Sawyer:** Well, I don't really think he was quite in that category. ... we have to take it on face value here, he learnt that what UBS was doing was in violation of what he thought was a compliance contract between UBS and the IRS. You would think, though, that a seasoned person would've known that it was clearly wrong, ... yet I think that most people would've known it was wrong. However, as I've seen here in Australia, particularly in the drugs area and in some of the very difficult issues in the security, you have to focus on the information and not on the informant. The society has to weigh up the balance of whether it's more important to get the large issues solved, through whatever mechanism, rather than to be totally pure and say ... no-one is a saint, no whistleblower is a saint, they never pretend to be, the issue is whether the information they provide is valuable for the society.

**Damien Carrick:** So you say look at the public policy big picture, don't look at ... the grey within the individual?

**Kim Sawyer:** That's right, that's right. The False Claims Act provisions of 1863 are now being extended into all sorts of areas in the United States: into the security markets with the SEC, the commodities and futures markets, the IRS and now 29 states have got the False Claims Act provisions, Canada's looking at it. Australia should be looking at it, but Australia has shown a remarkable reluctance to deal with corruption. It seems to stick its head in the sand and has this imperviousness towards looking at corruption and acknowledging what it is.

**Damien Carrick:** Why do you think that might be?

**Kim Sawyer:** There's a lot of issues wrapped up in it. ... in the early days I thought it was the mateship culture, that you simply don't do. I think that's disappearing, I think there's a recognition now that society as a whole needs to be protected, so I think that is dissipating, but I think the second issue is an immaturity here in Australia, that there's been this faith in an old-style regulation rather than recognition that we now live in a much more complex world where market regulation's required and not mandatory regulation, so I think it's an immaturity in policy-making and I think thirdly there's an extraordinary recalcitrant stubbornness to recognise the importance of whistleblowers.

**Damien Carrick:** You've been trying to convince Canberra to adopt US-style whistleblower laws, which would allow for compensation. What's been the response?

**Kim Sawyer:** The response has been, I'd say, best described as denial. I first put these proposals back in 1996, 16 years ago. I've put these proposals to parliamentary committee and the Dreyfus committee in 2008. Again, it wasn't adopted. I wrote to ... Federal Attorney General Nicola Roxon last year, who incidentally is my local member, and asked to speak to her on these matters 12 months ago. I'm still waiting to have that meeting.

I think the reluctance is part of a cultural problem; somehow they think whistleblowers have to sacrifice themselves for the public interest or for

the public good, which I think is a completely unrealistic proposition. They need to understand that everybody needs to be compensated in this world for the risks they take. That's the way our world operates.

**Damien Carrick:** This kind of legislation does reduce whistleblowing to an economic calculation, so whistleblowers who speak out but there are no funds to recover, they're left holding the legal can, but there might be no payoff. So, doesn't it leave us in a moral twilight zone?

**Kim Sawyer:** The most important thing of the False Claims Act is actually not the recoveries of actual moneys, nor the payment to the whistleblower; the most important effect is the deterrent effect it has on the participants — on the universities, on the hospitals, on the drug companies, on the defence contractors. It's the deterrent effect; it's about 20 or 30 times the actual moneys that are recovered, and my estimates here in Australia, over the next ten years would be, if we enacted this false claims legislation we could deter anything between eight and perhaps thirty billion dollars of fraud as a result of those sort of provisions. That's the lesson from the US experience.

**Damien Carrick:** Eight and thirty billion dollars of fraud?

**Kim Sawyer:** ... I've estimated across eight scenarios, and I've built in estimates of elasticity of response of firms. We could deter, just in terms of federal funds, cumulatively over the next decade, between \$8 billion and \$30 billion of fraud.

**Damien Carrick:** Of public money could be saved?

**Kim Sawyer:** Of public money, yes.

**Damien Carrick:** Give me a flavour briefly, just some of the war stories of the other cases that there have been in the USA.

**Kim Sawyer:** One included a fellow, an order for a defence contractor who realised that the firm was actually putting 'Made in the USA' on components when in fact they were made in Japan and he brought this to the attention of authorities for his own firm. He was sacked, he took out a false claims action, he fought it for a long period of time, it was from recollection, five or six years, and he eventually received a settlement, and

of course the whole practice was overturned. In the US they've had \$30 billion of recoveries since the False Claims Act was strengthened; \$30 billion in actual recoveries.

**Damien Carrick:** And that's separate from the IRS legislation?

**Kim Sawyer:** Separate from the IRS, yes, and about \$20 billion is in the health-care area, in the hospitals and Medicare fraud, as well as the pharmaceutical companies overcharging and so on, and about \$5 billion in the defence area, another \$5 billion in the environmental area. You should realise, it's just not in terms of dollars, the False Claims Act; it has important implications for ... health and safety, environmental considerations and so on.

**Damien Carrick:** Coming back to Bradley Birkenfeld, what's it meant for Switzerland? I mean, it's not only had an impact in the USA, it's had an impact in Switzerland as well.

**Kim Sawyer:** Most definitely. So we're looking at a cleaning up of tax havens, that's what this is all about, and that's why the Birkenfeld case is so important, because it sends a signal to all those whistleblowers, in the 11 banks that are currently under investigation, all the other possibilities that your money is no longer safe. So, it is a very important step forward for global regulation, really, and global accountability.



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## Eulogy, poem, awards and article

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### Keith Potter

24 January 1926 – 3 July 2012



This is Kim Sawyer's eulogy at Keith's funeral

I FIRST met Keith in 1993 when he was Chairperson of the Victorian Branch of Whistleblowers Australia. I remember well my first meeting with Keith and Betty at their home. My first impression of Keith was that he was a man I could trust; and unlike many other first impressions in life, this one was correct. The trust I sensed that day was never betrayed.

Keith was one of the seven founders of Whistleblowers Australia, the principal advocacy group for whistleblowers in Australia. Keith was the advocates' advocate; a confidant, a correspondent, a writer of submissions and a people's lawyer. He was a public servant in the true sense of the word, committed to the public interest and to the many people who benefited from his innate sense of fairness, common sense and wisdom.

He supported the cases of many whistleblowers over more than twenty years: Mick Skrijel, Bob Steele, Christina Schwerin, Tony Grosser, Ray Hoser, Karl Konrad, Stan van de Wiel, Lori O'Keefe and myself, just to name a few. But his most prevailing advocacy was for quarantine inspector Bill Toomer and small businessman Albert Lombardo. They came from very different backgrounds, but each had suffered a great injustice. Keith became their advocate and no one could have represented them better.

My memories of Keith include meetings with politicians, regulators and, of course, whistleblowers. Always Keith provided the balance. A meeting,

a lunch or an email often ended with a joke. With Peter McCartney, who I also acknowledge today, he guided the Victorian branch of Whistleblowers Australia. Whistleblowing is a tough problem; and for so many whistleblowers Keith was the anchor of fairness and common sense.

Our society depends on people of goodwill to do something when injustice occurs. Keith should be remembered as one who saw injustice, recognised it for what it was, and fought against it. Whistleblowers and non-whistleblowers alike owe Keith a great debt.

In life, you are privileged if you know a few very good people. I was privileged to know Keith Potter.

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### My husband

Lotte Fog

Lotte Fog blew the whistle on radiotherapy underdosing at Royal Adelaide Hospital. She told her story (under the pseudonym Geraldine Macdonald) in the April 2009 issue of *The Whistle*, where a poem of hers was published. This is the fifth of six poems Lotte wrote during the period of her whistleblowing. She can be contacted at [lottesfog@yahoo.co.uk](mailto:lottesfog@yahoo.co.uk).

***Author's note** The letter mentioned in this poem was the whistleblowing letter I sent to the chief executive of the South Australian Department of Health. The letter described the incorrect doses of radiation therapy given to about 900 patients at the Royal Adelaide Hospital.*

I decided to act  
a last ditch attempt  
to try to rectify  
a big wrong

The days were dense when  
I wrote the letter  
the hope of righteousness  
glimmered ahead  
in a blaze of concentration when

I wrote the letter

Then the long dark months  
they felt like winter  
as I waited until I  
safely  
could send my letter

and in the darkness  
I grew cold as I waited  
I started to lose hope of  
righteousness

until one glorious morning  
by now it was actually winter but it  
felt like pure joy  
I stood at the post office counter  
and as I paid for the postage  
mental structures like icebergs  
shifted in my head  
I sent the letter

I felt a whiteness  
my fear of repercussions  
outweighed by the knowledge  
that I had done all I could

the whiteness  
was my freedom as my responsibility  
was fulfilled  
was the blank page  
of days yet to come  
on which I hoped  
words of justice  
would be written

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WHISTLEBLOWERS ACTION GROUP  
QUEENSLAND

### Whistleblower awards for 2011

THE Whistleblowers Action Group Queensland selected engineer Michael O'Brien as its 2011 Whistleblower of the Year. The other annual award, for Whistleblower Supporter of the Year, has been given to journalist and "amateur hydrologist" Hedley Thomas. The award citations carried the following commendations from the group.





Michael O'Brien

The award has been given for the leadership that Michael O'Brien has shown to the engineering profession in this state, a profession that has largely remained silent about the standard and the relevance of much of the technical information on water engineering and risk management presented to and provided by the Queensland Commission of Inquiry into Flooding. The continuing pressure that he applied upon the inquiry to include particular facts, to give those facts due weight, and to link the reasoning by that inquiry where relevant to those facts, denied other interests the unimpeded advocacy of constructions that would have left the people of Brisbane at continuing risk of unnecessary and dangerous flooding.



Hedley Thomas

Hedley Thomas has been recognised, firstly, for the voice that he gave to those few individuals, engineers, flood victims and public servants who sought to provide the technical guidance that the Queensland Flood Inquiry was lacking. Secondly, he has been recognised for the investigation that caused the inquiry to hesitate, and then to withdraw from, the interim

support that the inquiry had given to the actions of water authorities. The full story of how the processes of the inquiry silenced technical advice dissenting from that preferred by the inquiry has yet to be told, but Hedley Thomas distinguished himself by being able to see which of the technical arguments held the truth. He supported that argument despite its humble origins and the lack of legal representation held by those few individuals.

The group, with its two awards, has sought to recognise both the integrity and the courage of whistleblowers, and also the contribution of persons whose actions have been of outstanding assistance to improving the circumstances for whistleblowers in this State.

This is the nineteenth year that the group has made its awards to deserving persons. Previous recipients of the Whistleblower of the Year Award have been as follows.

- Ms Kerry Campbell (1993), whose disclosures of mistreatment of people in care at the Basil Stafford Centre led to the closure of the centre
- Dr Brian Senewiratne (1994), whose disclosures of conditions at the Princess Alexandra Hospital led to major refurbishment of that public health facility
- Mr Jim Leggate (1997), whose disclosures about the non-enforcement of the environmental conditions of mining leases led to the transfer of regulatory functions from the Department of Mines
- Mr Oliver Clark (1998), whose disclosures about child abuse, and about the cover-up of the same, have led to the imprisonment of several religious clergy
- Rev Pat Comben (1999), who made disclosures to the "Sunday" Program about the considerations of the Queensland Cabinet prior to Cabinet's decision to order the destruction of the papers of Magistrate Heiner
- An unknown whistleblower (2000), whose disclosures led to the investigation of the Equity Commissioner and the Public Service Commissioner in Queensland, which investigation preceded the resignation of the former and the demotion of the latter
- Mr Darcy Hogan (2001), whose disclosures about the governance of racing boards in Queensland led to inquiries into and reforms of the racing industry in this state
- A public officer who wishes to remain anonymous (2002), whose disclosures led

to the replacement of the chief executive of a Queensland government administration

- Ms Wendy Erglis (2003), whose disclosures foretold of the direct involvement of the Queensland Parliament and its servants in the bullying of officers of Queensland Health
- Mr Nathan Moore and Mr Greg Maddock (2004) for the pain they experienced in living the harm brought to them through the victimisation practised by organisations.
- Dr Con Aroney and Nurse Toni Hoffman (2005) for the disclosures they made about deaths in the Queensland Health system arising from a rogue bureaucracy and alleged criminal malpractice
- Colin Dillon (2006) for disclosures about failures by the Queensland Government to provide a "duty of care" to Aboriginal peoples, particularly those who are held in lawful custody
- A sporting figure of prominence who wishes to remain anonymous (2007), for disclosures into drug-taking by high performance athletes
- The award was not made in 2008
- Barry O'Keeffe (2009) for disclosures made about the unsatisfactory performance of Queensland police and justice system over the destruction of the Heiner documents
- Major Harry Smith (2010) for the example shown to commanders in the Defence Force about the obligation to support men and women who have served their country in time of war

In 1996, the award of Whistleblower Supporter of the Year went to Mr Bruce Grundy, for disclosures made through the University of Queensland's *The Weekend Independent* newspaper, concerning the destruction of the Heiner papers by members of the government of the day. The award in 2002 went to Mrs Julie Gilbert, who brought to the attention of the public the state of politicisation of the Queensland Office of the Director of Public Prosecutions (and, subsequently, of the Queensland justice system). In 2003 the award went to radio announcer Alan Jones for highlighting nationally the politicisation and capture of Queensland's justice system as demonstrated by the imprisonment of Pauline Hansen. In 2004, Bronwyn Bishop received the award for the work of a federal parliamentary committee in exposing alleged criminal acts by the Queensland Government over the destruction of the Heiner documents. The Bundaberg Hospital Patients Support Group received the award in 2005 for support to whistleblowers in Queensland Health. Journalist Piers Akerman was recognized in 2007 for the coverage of the audit completed by a Queen's Counsel of allegations of suspected official misconduct by more than

sixty public officials within Queensland. In 2008, the award went to a prominent lawyer who wishes to remain anonymous, who declared with other prominent judicial figures the law that should have been applied in addressing the destruction of the Heiner documents sought for legal proceedings. In 2009, former Fitzgerald Inquiry head Tony Fitzgerald won the award for his warnings to the Queensland Government that levels of corruption from the time before that inquiry were returning to Queensland and to its institutions. In 2010, Julian Assange was recognised for his Wikileaks systems for bringing powerful organisations to account for the abuse of their powers.

## Dealing with abrasive managers

Brian Martin

Many whistleblowers know all about bullying at work — because they are prime targets. Bullying can serve as a form of reprisal. Most commonly it is by bosses; sometimes co-workers join in. When a group is involved in bullying, it is called mobbing. Occasionally, mobbing is by subordinates against a boss.

Common methods include abusive language, persistent denigration of work performance, put-downs in front of others, petty harassment (such as blocking simple requests), assignment to trivial duties or to onerous ones, and referrals to psychiatrists.

Whistleblowers aren't the only targets. Others are bullied because they are rivals, members of a minority group or convenient scapegoats, among many other reasons. Bullying is important for all workers, but especially so for whistleblowers.

Bullied workers suffer incredibly. Their morale nosedives. Some quit; others go on leave for stress. So what do researchers and advisers say to do? The prognosis is not good.



One option is to put up with the abuse. This makes life a continuing misery, sometimes with dire consequences for health and personal life. Reasoning with the perpetrator seldom succeeds; fighting back often leads to increased harassment. Many advisers therefore suggest leaving, because one's health and mental well-being are more important than any job.

If the workplace is so dysfunctional that workers are quaking in their boots, underperforming, resigning and taking leave for stress, you'd think that higher management would want to do something about it. They know about the problem because many bullied workers make complaints to their boss's boss or a human resources unit. This hardly ever fixes the problem. Whistleblowers know this only too well: many of them report their concerns to bosses, upper management or watchdog agencies, with abysmal results.

For this reason, I am sceptical about the value of anti-bullying policies. They rely on a set of formal processes and don't address the source of the problem. I've even seen the formal processes used against the targets of bullying.

Recently I became aware of an entirely different approach to the problem of workplace bullying, by a US management consultant named Laura Crawshaw. She is called in by senior managers to work with bosses who are causing havoc among their employees through their rough behaviours. She doesn't like the term "bully," instead calling these bosses "abrasive."

She notes that nearly all the writing on workplace bullying focuses on the targets, the ones suffering abuse. Those designated as bullies are typically seen as uncaring, insensitive, scheming and sometimes malevolent figures who delight in making the lives of their subordinates a living hell. However, after working with many abrasive bosses, she came up with an entirely different assessment. She says they are not intentionally hurting anyone. Indeed, they are usually oblivious to the harm they are causing.

This perspective resonated with me. I had read an important book by psychologist Roy Baumeister titled *Evil: Inside Human Violence and*

*Cruelty*. Baumeister examined some of the very worst human behaviours, including murder, torture, terrorism and genocide. He found that few perpetrators fit the Hollywood stereotype of malicious, sadistic villains. Instead, most of them feel justified in their actions, believe they had little choice, and wonder why others are making such a fuss. Their victims, on the other hand, suffer enormously, and seldom can comprehend that their tormenters do not treat the events as equally serious.

Crawshaw has worked with hundreds of abrasive bosses and says she has encountered only two who fit the description of a psychopath, a person with no conscience who delights in hurting others. These exceptions aside, abrasive bosses are not out to get people at all.

This may be hard to believe. After all, when you've been at the receiving end of abuse, the usual assumption is that the other person intended to cause hurt. Crawshaw's perspective is so different that it may require some time to absorb. I'm going to outline some of her key insights, but wouldn't expect you to accept them without question. If these issues affect you personally, it is worth getting her publications (see below) and going through them slowly and carefully. If it helps you — or someone you know — to survive in the workplace, it will be worth it.

Here's the key, and it may be a surprise: abrasive bosses seek, above all, to be perceived as competent. When they think subordinates are performing below par — correctly or otherwise — they experience this as a threat to their competence, which requires top performance from the entire unit. In the face of this threat to their very survival — for they see their career as dependent on being competent — they will act against those letting down the team.

This is the hard part to grasp: when bosses are abusive, over-controlling and undermining, it might seem personal to you but to the abrasive boss it's all about their own survival, which depends on their perceptions of competence.

For comparison purposes, Crawshaw describes how an adequate boss deals with the perceived poor performance of a subordinate. This sort of boss

doesn't assume the employee is incompetent, but rather investigates to find out what's going on. Perhaps there's a need for better communication, guidance, training or support.



However, an abrasive boss treats perceived incompetence as actual incompetence, and acts against it. "They don't see any need to read and accurately understand why their coworkers perform below standards because *they already know*: incompetence stems from laziness, stupidity, or defiance." Crawshaw says abrasive bosses never learned the skill of empathy.

But, you might say, surely an abrasive boss must realise how damaging their behaviours are, indeed how counterproductive. But just because *you* can recognise the damage doesn't mean *they* can. Crawshaw says abrasive bosses are "blinder than bats." So they continue their methods oblivious to the consequences.

This is where Crawshaw, a "Boss Whisperer," comes in. Top management has recognised the problem and called her in to help the abrasive boss change, just as a horse whisperer tames a wild horse. Crawshaw describes how she learned techniques for getting through to abrasive bosses. For example, she learned that telling these bosses that their behaviours are damaging was not effective, because they disputed every claim. Instead, she tells them that employees *perceive* them as abrasive, because damaged feelings cannot be so easily disputed. She also tells how she deals with the defences put up by abrasive bosses, giving lots of sample conversations.

What induces these bosses to change? They have been put on notice by top management: change or else. Their organisational survival is at stake. Some abrasive bosses can change, but some can't, and they might have to be moved or released — put out to pasture.

But there's a prior problem, before a boss whisperer is brought onto the

scene. Top managers seldom want to do anything about the problem boss. Crawshaw says they are afraid of the abrasive boss. After all, who wants to deal with someone who is abusive and uncomprehending? Top managers are also afraid that intervening will damage the good outcomes from the unit. So they sit on their hands and let the damage continue. Some abrasive bosses leave a trail of tears — with talented employees leaving or performing sub-par — and yet no one raises a finger to stem the damage.



If top management won't act, who will? Subordinates? Crawshaw devotes a chapter to strategies for subordinates and co-workers of abrasive bosses. They can use the soothe strategy, the reverse threat display, or one of several ways to induce upper management to intervene.

The message from Crawshaw's work is to see abrasive bosses as seeking high performance but lacking the empathy and people skills to achieve their goals in a humane way. They genuinely do not understand the harmful impact of their behaviours, and therefore need to learn new skills. However, because their patterns of behaviour have been refined over a lifetime, change is only likely if the only other option is organisational extinction.

Abrasive bosses are pretty set in their ways, higher level managers seldom want to intervene and subordinates usually just think of themselves — and that means coping or leaving, not trying to fix the problem. However, when top managers call in a Boss Whisperer like Crawshaw and see bosses change their styles, they can become committed to behavioural change.

Crawshaw's book *Taming the Abrasive Manager* treats a serious issue, yet is highly engaging to read, being both chatty and logical, with examples used to illustrate practical strategies. So why isn't her work more

widely known? I would say it's because her basic premise — that abrasive managers do not intend harm but lack insight and skills — clashes so strongly with prevailing ideas.

Speaking out about problems at work is a prime trigger for bullying. The lesson from Crawshaw's work is to set aside the idea that those who initiate reprisals are consciously malevolent. Actually, they think they are doing the right thing: they feel justified in their actions. To be effective in responding to unfair treatment, it pays to understand the psychology of those who take these damaging actions.



Laura Crawshaw, *Taming the Abrasive Manager: How to End Unnecessary Roughness in the Workplace* (San Francisco: Jossey-Bass, 2007)

Laura Crawshaw, "Coaching abrasive leaders: using action research to reduce suffering and increase productivity in organizations," *International Journal of Coaching in Organizations*, Issue 29, 8(1), pp. 60-77

<http://www.bosswhispering.com/employers-seeking-help.html>



Laura Crawshaw



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## Conference and annual general meeting

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### Conference

Saturday 24th November 2012  
8.15am for 9am

Speakers confirmed to date are Professor Wendy Bacon, University of Technology Sydney; Professor Tom Faunce, Australian National University; Kathy Flynn, researcher on leaking; Leigh Dayton, mainstream journalist; Anna Salleh, online science journalist; and Allan Asher, former Commonwealth Ombudsman.

**AGM** Sunday 25 November 2012  
8.15am for 9am

Plus speakers, whistleblowers Robert Spence & Lisa Hamilton, followed by a round table talkfest, where we get to share our experiences.

**Venue:** Uniting Church Ministry Convention Centre on Masons Drive, North Parramatta, Sydney NSW

**Non member:** \$65 per day, includes lunch & morning/afternoon tea. Optional \$25 extra for dinner onsite 6pm Saturday night

**Member:** \$45 per day or \$80 for two days. Optional dinner @ \$20 a head, onsite 6pm Saturday night. (Note member discount also applies to students & concession cardholders).

**Bookings:** notify full details to treasurer Feliks Perera by phone on (07) 5448 8218 or at feliksfrommarcoola@gmail.com or president Cynthia Kardell (for phone/email see below under enquiries).

**Payment:** Mail cheque made payable to Whistleblowers Australia Inc. to treasurer, Feliks Perera at 1/5 Wayne Ave, Marcoola Qld 4564, **or** pay Whistleblowers Australia Inc by deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626 **or** by credit card using PayPal to account name wba@whistleblowers.org.au.

**Low-cost quality accommodation is available at the venue:** Book directly with and pay the venue. Call 1300 138 125 or email service@unitingvenues.org

**Enquiries:** ring national president Cynthia Kardell on (02) 9484 6895 or email ckardell@iprimus.com.au

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## Whistleblowers Australia contacts

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**Postal address** PO Box U129, Wollongong NSW 2500

### New South Wales

**“Caring & sharing” meetings** We listen to your story, provide feedback and possibly guidance for your next few steps. Held by arrangement at 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, Balmain 2041. Ring beforehand to arrange a meeting.

**Contact** Cynthia Kardell, phone 02 9484 6895, fax 02 9481 4431, ckardell@iprimus.com.au

**Website** <http://www.whistleblowers.org.au/>

**Wollongong contact** Brian Martin, phone 02 4221 3763.

**Website** <http://www.bmartin.cc/dissent/>

**Queensland contacts** Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232, jarmin@ozemail.com.au

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**Tasmania** Whistleblowers Tasmania contact, Isla MacGregor, phone 03 6239 1054, opal@intas.net.au

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Thanks to Cynthia Kardell and Patricia Young for proofreading.

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## Whistleblowers Australia conference

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See previous page for details

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### Annual General Meeting

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Whistleblowers Australia's AGM will be held at 9am Sunday 25 November at the Uniting Conference Centre, North Parramatta (Sydney). See previous page.

**Nominations** for national committee positions must be delivered in writing to the national secretary (Jeannie Berger, PO Box 458, Sydney Markets NSW 2129) at least 7 days in advance of the AGM, namely by Sunday 18 November. Nominations should be signed by two members and be accompanied by the written consent of the candidate.

**Proxies** A member can appoint another member as proxy by giving notice in writing to the secretary (Jeannie Berger) at least 24 hours before the meeting. No member may hold more than five proxies. Proxy forms are available online at <http://www.whistleblowers.org.au/const/ProxyForm.html>.

## 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.

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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.

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