

*"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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Jean Lennane (with umbrella) at a rally, 2008

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## Vale Jean Lennane

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### Jean Lennane



Jean Lennane, longtime Whistleblowers Australia president and national committee member, passed away in Canberra on 18 September 2014.

A memorial service for Jean was held in Sydney on 17 October. In this special section of *The Whistle*, several of the talks at that service are reproduced, plus comments by Jonathan Phillips AM and reflections by three members of WBA who knew Jean for many years: Debbie Locke, Cynthia Kardell and Brian Martin. Following this is an extract from one of Jean's most widely read publications.

### Jean's passions

Michele McKenzie

I AM representing Leichhardt Council today and extend a warm welcome to everyone to this memorial for the late great Dr. Jean Lennane.

Recent media and ABC Mental Health week would have made Jean very happy because she thought it was better to normalise the mental health problems that people have all the time. It is vindicating to hear the current experts saying many of the things that

Jean said for so long without the attention that they are getting now.

Jean believed that information has to be heard many, many times over before it is finally understood, and was prepared to keep saying it whether people liked it or not. Bravo Jean.

I knew and worked with Jean closely since 1998. There are many people here who have known Jean for a lot longer so I bow to greater knowledge, but I will talk about my experience of Jean.

She was generous, hardworking, persuasive, intransigent and fearless, with no respect for authority, and this was liberating for her colleagues who might have had some lingering respect.

Politicians and bureaucrats, particularly those with something to hide, hated the way she would carpet them with the hardest questions. She had a name and she used it for her best purposes rather than for herself, and everywhere she went she would respectfully respond to the needs of others less fortunate. She was very proud of her sons and loved to show photos of her grandchildren and I'm glad she managed to spend time with them.

For a long time she would ring me early in the morning (my kids would scream "Jean's on the phone") and we would discuss strategy for the day.

She was very inclusive and this sometimes brought us to difference as she thought it was better to have someone inside the tent pissing out than outside pissing in. Her words. I thought that they might just piss all over the inside of the tent, and we were both right.

She had great respect for others' skills and she both acknowledged and exploited them. I think this was because she had great confidence in her own ability, so there was no pettiness or jealousy in her.

Callan Park and its continuing connection to mental health care was Jean's strong passion because she saw it as an excellent place for recovery, and scorned those who publicly said that sitting in a chair looking at a wall while locked in the Missenden unit was more therapeutic than the green meadows of Callan Park.



Callan Park Hospital

She remembered the political history of the electorate and knew that a safe Labor seat meant no change, so it was better to make the seat marginal, and this struck a chord with a lot of the old timers around the place. It was her idea to make the Liberals care about the seat by reminding them that all empty nesters were fast moving to the big developments allowed by Labor and that Labor might live to regret it.

She was very effective in disrupting the plans of bean counters who wanted to tick boxes, by refusing to accept their terms and farce of consultation. We had seen bad things happen to other campaigns when communities went along with the government process.

In 1999 Jean ran for office and achieved 9% of the vote with a single issue campaign, no mean feat in a state election.

During the years she was constantly accompanied by her beloved, benign companion glossy black coated Lucy, who would tirelessly present a handy person with a stick to throw. Jean and I drove all over the place to meet people and this was sometimes interrupted by a bit of belly dancing with flowing skirts and bells, which Jean assured me was wonderful therapy for arthritis.

Jean was an inspiration to all and without her fierce determination to succeed it's hard to imagine that our campaign would have achieved the success that it did.

Along with many others, I developed a strong affection for Jean and will fondly remember her for the rest of my days.

Psychiatrist, mother of two, grandmother of five, companion to Lucy, mental health advocate, community activist, whistleblower, belly dancer,



mentor and friend to many. Vale Dr Jean Lennane.

## Jean's Balmain campaigns

Fergus Fricke

WHEN I was asked to speak about Jean's "campaigns" in Balmain at her Memorial Service I realised it was impossible to cover every issue she was involved in given the time available. In what follows there is a brief description of the Balmain Jean came to and what are some of her lasting legacies.

In 1978 Balmain was still a predominantly industrial, working class suburb but rapid changes were occurring. Industries were closing down or moving out and the gentrification of Balmain by a young socially conscious university educated middle class was gaining pace. The huge Mort's Dock and Engineering works that had employed 1500 men had closed in 1957 after over 100 years operating in Balmain. Though there was some resistance the Mort's Dock site was replaced with the inappropriate ANL Container Terminal in 1968. By 1978 the ANL terminal was no longer viable and had stopped operating and other uses for the site were being investigated. Also in 1978 the previously Right controlled Balmain Labor Party Branch had been stacked and controlled by the Left faction organized by Peter Baldwin and Peter Crawford.

The other important event that occurred in Balmain in 1978 was that Jean and her family took up residence at 10 Wharf Road, Birchgrove. At Jean's back doorstep was the abandoned container terminal. While most Balmain residents were glad to see the end of the container terminal and the associated container trucks using the narrow streets they were concerned about what might replace it. Jean saw it as an opportunity to gain more open space for Balmain and the Leichhardt municipality that had only 1.5 hectares of open space per 1000 residents compared with an average of 45 hectares per 1000 residents in other Sydney municipalities. Although Jean had two young boys and a full-time job she instigated the Mort Bay Action

Group and became its outspoken spokesperson. (This, I might add, was at a time when cockroach control was a full-time occupation for most Balmain residents.)

As the future of the Mort Bay land would be decided by the state Labor government together with the Labor controlled Leichhardt Council and influenced by the Balmain branch of the Labor Party. Jean tried to join the Balmain branch which, as part of its socialist agenda, supported public housing for the whole of the site. There was certainly a need for this and it would stem the outflow of working class residents from Balmain as well as boost the number of Labor voters. Jean's application for party membership was initially accepted and soon after rescinded. In the end the outcome for Mort Bay was a compromise and half the Mort Bay site was set aside for open space but not until after a bitterly fought election in which Labor lost the Balmain seat for the first time in its 97-year history.



Mort Bay Park

Jean didn't have to wait long for other planning, environmental and open-space issues to arise. For instance, in the 1980s and 90s Balmain was threatened with several proposals for a second harbour crossing and more believable threats such as a heliport and the realistic redevelopment of the other large Unilever, Ampol, Monsanto, Caltex and Balmain Power Station sites. Smaller sites such as "Clontarf" were not ignored by Jean either who, with others, was forcibly removed by police at a sit-in to stop the construction of units on a previously designated area of open space.

Not all "causes" that Jean supported would be considered successful by some people but the mere fact that there was strong opposition to inappropriate developments by the Balmain community meant that such proposals would not be as likely to occur in future. Without people like Jean being involved in opposing the third runway at Sydney Airport (Jean was very

active in the No Aircraft Noise campaign) we would probably have a fourth runway by now and the abolition of the night-time curfew.

By the early 1990s Jean's dispute with the Department of Health had ended in her sacking but not in her interest in Callan Park. She saw the need for action to preserve Callan Park's mental health facilities, services and grounds and ensure that the large industrial sites were not overdeveloped. Jean and MBAG (which morphed into Ballast Point Campaign Committee) campaigned for the whole of the Caltex site at Ballast Point to be turned into a park. After over a decade of action during which time Jean would vigorously pester politicians at every opportunity that included "running" (not "standing") as a candidate in the Balmain (renamed Port Jackson) seat in the 1999 election and attending the Friends of Callan Park (another of her creations) meetings at 6:30pm on the first Monday of each month and afterwards attending the Ballast Point Campaign Committee's meeting which started at 7:30pm on the same night. In February 2002 Bob Carr announced the Labor government would compulsorily acquire Ballast Point for the park that was officially opened in July 2009.



Callan Park garden

While Jean had her wins she also had partial losses. The demutualisation of the NRMA (National Road Motorists Association) proposed in 1994 was one example. Jean, Ann Lampe, Anne Keating and others fought the proposal in the NRMA boardroom (Jean got herself elected to the NRMA Board), the courts and the media. In the end Nick Whitlam and his cronies on the Board succeeded in duping enough NRMA members to vote for a modified demutualisation that was approved in 2000. While the insurance

arm of the NRMA was demutualised and some backers benefited financially, the demutualisation of the NRMA motoring arm did not go ahead.

During all of this activity Jean still had time to play tennis, do belly-dancing (not ballet), go to concerts and bring up two girls, Anna and Lucy. Anna was not one of Jean's successes as she was a delinquent who scared neighbours, left home on a number of occasions and finally had to be found a foster home. Lucy was a model child substitute but was spoilt rotten by Jean. And in case you are wondering Anna was a German shepherd and Lucy was a Labrador-kelpie cross.

What made Jean unusual, if not unique, was her energy, vision, intelligence, social conscience, her healthy scepticism of the motives of those in power and her ability to stand up to those in authority ... and make them quake. I don't think she ever gave "surrender" a thought. Balmain has a lot to thank Jean for and her family have a lot to be proud of.

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## Jean the unionist, and more

Tony Sara

FRIENDS, comrades, family members,

It is an honour to stand before you today and say a few words about the indomitable, unstoppable and inspiring Dr Jean Lennane. I thank Jean's son, James, and the family for allowing me to do so.

My name is Tony Sara and I am the current President of the Australian Salaried Medical Officers' Federation — more easily known as ASMOF NSW. Jean was a past-president and vice-president of the Public Medical Officers' Association of New South Wales which was the precursor to ASMOF NSW.

Jean was a fierce but fair-minded and dedicated unionist and doctor who fearlessly led industrial campaigns calling for better conditions and pay in public hospitals, including for our nursing colleagues. Her passion for human rights began in the mid-1980s at the NSW Labor Council. Sadly, it eventually led to her employment being terminated in 1990 when she

was the Director of Drug and Alcohol Services at Rozelle Hospital.

Her "crime" was to publicly criticise cuts to mental health and drug and alcohol services in the public health system. Yet Jean was the delegate on site at the hospital so, in fact, she had every right to speak out as she had done.



Jean at Rozelle Hospital rally, 2008

This must have been a very heavy blow indeed for someone who had dedicated 14 years of her professional life to the hospital, founding Friends of Callan Park, fighting for the hospital to be retained within Callan Park grounds and opposing the now common practice of warehousing those suffering from a mental illness in gaols.

Undaunted and undeterred, Jean went on to help found the self-help organisation that is now known as Whistleblowers Australia after she realised that she herself had been a whistleblower and had suffered the consequences that so many whistleblowers face, even today. Since its inception, WBA has helped hundreds and hundreds of people who have spoken out, for the common good, against inequity and corruption.

And that brings me to share with you what I most admired about Jean.

Talented psychiatrist, celebrated author, dedicated unionist, campaigner against injustice and champion of the rights of people suffering from mental illness, Jean had an indomitable spirit, an unwavering belief in herself and what is right and a genuine love and concern for those less fortunate. These very special qualities allowed her to live a life that was full of passion and commitment, a life of half-full rather than half-empty glasses. And this reminds me of one of the famous quotes from Dr Martin Luther King, Jr:

An individual has not started living until he can rise above the narrow confines of his individualistic concerns to the broader concerns of all humanity.

Because she was such a caring doctor, colleague, friend, leader and mother, Jean will be very sorely missed. But greater than the sorrow of her passing is the hope that she spread during her life, which lives on in the organisations she participated in and founded, including importantly ASMOF, and the many, many people she helped and in her beloved family and friends!

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## Thoughts from a psychiatrist colleague

Jonathan Phillips

I WAS deeply saddened to hear of the death of my esteemed colleague Dr Jean Lennane.

I knew Jean for many years. She was a tough and able psychiatrist, she was there when people needed her, and she fought a heroic fight for the public good in many settings.

Jean has left a loyal group of friends who are never going to forget the important part she played in their lives.

I have no doubt that Jean's legacy will continue, and we are richer for it. The profession should never forget her.

*Jonathan Phillips AM is an eminent Sydney psychiatrist, former president of the Royal Australian and New Zealand College of Psychiatrists, and friend to whistleblowers.*

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## Jean meets a police whistleblower

Debbie Locke

I MET Jean at the lowest point of my life. I was in my late twenties, struggling with giving up an alcohol addiction and the death of both my parents. I had been through the McKinnon unit at Rozelle Hospital and was not impressed with the idea of sitting in Alcoholics Anonymous Meetings a day at a time for the rest of my life.

It was recommended to me to go see a really good psychiatrist named Jean

Lennane who understood alkies. As I lived in Balmain I only had to walk around the corner to her office. At my first appointment I was telling her all about my crappy life and why anyone would drink if they had my sad childhood. In passing I slipped in that I was a Detective Senior Constable who had spoken out about police corruption and that there were a number of interesting characters, cops and robbers who were wishing me dead in a very serious way. Jean looked at me with her mouth open and said, "Oh you're a police whistleblower". This was the second time I had heard this phrase. The first time was by the Assistant Commissioner who spat the words at me.



Debbie Locke

Jean taught me with kindness and patience that I had not done a bad thing and that the negative and sometimes frightening reaction I was getting was the normal run of the mill treatment of whistleblowers. Talk about shooting the messenger.

I was to go on and have many interesting years with Jean on my journey through life. We danced with the New South Wales Police through a police royal commission. We were on an advisory council to them for a while. I had some interesting times in relation to the coroner's inquest into the death of Gary Lee Rogers of which we were made party to. I even travelled down to meet Tony Grosser in South Australia who she was very fond of.

Whistleblowers Australia meetings started in my lounge room in Balmain.

I remember many times in the early hours of the morning having to get out of bed and yell down to members to move away from my front door step as they were keeping me awake, still chatting, enthusiastic to know they were not alone, that there were others out there too who were honest and being persecuted. To have the support of fellow travellers is so good for the soul.

I managed to stay sober all these years and raise three children. One who was born at 26 weeks after I had been cross-examined in the witness box for six days at the NSW Police Royal Commission in 1996. Hayes has severe disabilities due to the trauma of his early birth. He is a constant reminder to the whole family of my whistleblowing days. I was so proud that Hayes came with me to Jean's memorial service in his new suit. He was very well behaved, except for when he tried to put his head on a lady's lap for a little sleep. Yep, he keeps me young. Still doing the Wiggles. I have a different life than I thought, but it is true and honest. I have no regrets.

I have met some amazing, strong people over the last twenty-odd years. Cynthia had the baton handed to her and she is another strong woman who does Jean's memory proud. Imagine if I had never met Jean? Would I be alive now? Would I have had a family and survived my whistleblowing experience? Probably not. How lucky I was to have been in Balmain at the right time. All the stars lined up. I blew the whistle and survived at a time when others around me did not.

Would I do it again? I thought not. Yet recently I saw an injustice and I know now I am of the personality that if I see the wrong thing, I cannot be a sheep and walk on by. Jean taught me to be proud of who I am and not to be afraid. Shake their cage and make the bastards answer for what they have done. Rest in Peace Jean. You did so much good for so many of us. What a wonderful woman.

## Jean and Whistleblowers Australia

Cynthia Kardell

IN March 1994 I went looking for Whistleblowers Australia (WBA) and along the way I was told to ring a Dr Jean Lennane. When I did Jean was busy, brief and to the point. I was to get myself along to one of the caring-and-sharing meetings in Balmain on a Tuesday night and get some help. "Do I need to contact any ...?" "No, just go in, say hello" and Jean was gone.

I learnt later that was Jean's way, but at the time, she did have bigger fish to fry. Calls were coming in thick and fast from police whistleblowers who would later give evidence before the Wood Royal Commission between 1995 and 1997 about instances of bribery, money laundering, drug trafficking, fabrication of evidence, destruction of evidence, fraud and serious assaults. Jean didn't mince words and had a talent for pithy sound bites and she was in demand, explaining how whistleblowers were central to stopping the systemic corruption in the NSW Police once and for all. Eventually the drip feed of good inside information to the press and the Commission's investigators from Jean, John Hatton (independent member of state parliament), and whistleblower and WBA member Debbie Locke eventually put paid to Police Commissioner Tony Lauer's assessment that corruption in the New South Wales Police was not systemic or entrenched, with the result that WBA developed a public persona as a force for good in public life.

In the same period young male juveniles found their way to Jean's door, with complaints that the police were ignoring their claims of sexual abuse. They were rent boys or prostitutes who were working the wall in Darlinghurst. They claimed senior police, politicians and even members of the judiciary were part of a paedophile ring that rented the boys out to groups for others to abuse. Jean and her colleagues worked tirelessly to bring their claims about the police and others before the Commission. The media coverage meant that other young children, who had been abused by their fathers, uncles, brothers and



priests, dredged up the courage to come forward with similar complaints about police inaction. In 1995 the Government widened the terms of reference to include child abuse.

These were tumultuous times, not seen in Australia since the Fitzgerald Inquiry in Queensland in the late eighties and I think it is fair to say that Jean, like Debbie, rose to the challenge, carving out a place in public life for the WBA we know today.

But back to the “rent boys.” Jean, representing WBA, and another health professional formed what became known as the Australian Child Protection Alliance or ACPA.

ACPA put together a strategy and quickly swung into action. WBA’s Lesley Pinson and Jim Regan solicited media opportunities for Jean and others turned their minds to how best to publicise the issue. By this time Jean had accumulated a number of boxes brimming with written complaints from children, including rent boys documenting the failure of the police to investigate their claims of sex abuse. Some of those complaints concerned paedophiles working as politicians and judges. ACPA lobbied all quarters and found a friend and supporter in Franca Arena, NSW Labor Upper House MP.



Franca Arena

It’s fair to say that Franca put the cat among the pigeons in 1997 (and her job on the line), when she tabled the boxes of complaints in the NSW

Parliament. In her speech Franca thanked Jean and, among others, fellow WBA members Chris Dale, Sue Dale, Lesley Pinson, Karlene Jones, Jim Regan, Louise Roy and Alastair Gaisford. She said “these people have worked tirelessly in the past couple of months. They organised vigils outside Parliament House on 14, 15 and 16 August and organised a rally in the Domain on Saturday, 6 September.” All hell did break loose and Franca did lose her job, but eventually the state government had to act and set up its first child protection unit, headed up by UK recruit Bob Woodhouse.

It’s not well known, because the press didn’t give it much space, but a significant number of the complaints tabled in Parliament led to criminal convictions. By this time paedophilia had come out of the shadows and was being talked about openly and in public like it had never been before. And children, even rent boys, were being listened to even as the adults grappled with their embarrassment, knowing that increasingly there’d be no place to hide.

In about 1995, in the lead-up to the hearings in the Wood Royal Commission, the NSW Police set up the Internal Witness Support Unit for the support of police whistleblowers and an oversight committee known as the Internal Witness Advisory Committee (IWAC), chaired by the Police Commissioner or Deputy and comprising representatives from WBA, NSW Ombudsman, Independent Commission Against Corruption (ICAC), St James Ethics Centre and the NSW Police Professional Standards Unit. Jean, together with a police whistleblower (usually Debbie Locke), represented us until about 1997 when I started going to the meetings with Jean. We’d worn out our welcome by 2005. The committee was on hold for most of 2006 and shut down in September 2007.

Throughout that time, Jean was our public face when some issue grabbed the news. I’ll mention just a few.

In 1994 Lesley Pinson worked as an auditor at the NSW State Rail Authority (SRA). She discovered evidence of safety failures, fraud, and sexual and racial harassment. Management didn’t want to know: it tried to shut her up and later sacked her. Barry O’Keefe

QC, ICAC Commissioner, refused to investigate her claims. Undaunted, Lesley went to Tony Harris, NSW Auditor General. Tony Harris agreed with Lesley, finding the SRA was seriously corrupt. In his defence Barry O’Keefe famously told journalists he’d always known State Rail was corrupt. Jean thought he was corrupt and publicly said as much, adding he was not a patch on his predecessor Ian Temby QC. Tony Harris referred their findings to Barry O’Keefe for ICAC to deal with it. Unsurprisingly Barry O’Keefe referred them back to the SRA. The SRA did nothing.

Eventually the Government did the thing that governments do. It downgraded the findings to a systemic failure, punished no one and broke the organisation up into four separate entities. I call this a recurring system failure of government.



Barry O’Keefe

When Jean first stood down as the president in January 1996 whistleblowing was, on her assessment, firmly on the political and legal agenda. This was largely because many people had come to realise that the Wood Royal Commission, ICAC failures under commissioner Barry O’Keefe QC (see below) and the reforms to deal with paedophilia would not have come about without the whistleblowers and those who banded together with Jean under the banner of Whistleblowers Australia to push the issues to their conclusion. Essentially Jean grasped the moment and ran with it to our benefit as a group and a society.

And we liked to think that our efforts led to Barry O’Keefe being replaced by Irene Moss in 1999 with a mandate to change its relation to whistleblowers. Certainly her tenure began with a refreshingly different approach. Jean and I had semi-regular meetings with Irene Moss in her early years, until ICAC reverted to form and we walked out of a meeting with her deputy, never to truck with the devil again.

In the meeting Kieran Pehm admitted ICAC had decided to investigate the Thredbo disaster whistleblower John Kite in retaliation after his allegations that there were rats in ICAC’s ranks went to air on Channel 9’s program *Current Affair*. The alleged “rat” was Gail Furness QC, previously in-house counsel for Thredbo Council when John Kite first blew the whistle on council inaction prior to the landslide. Kite claimed she had poisoned the Council and, later, ICAC against him. ICAC ran its inquiry into John Kite very publicly indeed and later prosecuted Kite for allegedly lying to ICAC. Fortunately Kite was acquitted by a jury, but he had to wait until June 2000, for the Coroner Derrick Hand to find that inaction by the authorities over many years was, as John had claimed, one of the major contributors to the Thredbo disaster in July 1997, which claimed so many lives. Remember Stuart Diver.



Subsequently WBA took a different route. We encouraged whistleblowers not to go to ICAC at all unless there was hard evidence of bribes being paid, of cash being handed over in brown paper bags, or sex in return for development consent (remember Wollongong Council) or political abuse of office and corruption. And they were to be prepared to be treated like a lowlife police informant.

In those years whistleblowers were also coming forward, saying their doctors were selling them out for a fee.

Jean labelled the doctors “hired guns” and publicly went into bat for those who she thought had been done over by their employer’s consultant. Jean wrote extensively about the prevalence of hired guns in whistleblower cases and even today, as the evidence continues to grow researchers and students rely on her papers.

We decided to tackle head-on Dr Delia Gapper, the Government Medical Officer and Chief Executive of HealthQuest, the source of most of the offending forensic medical reports. We rallied outside her offices and asked her to speak at a conference we held at Parliament House in 1997. To her credit Gapper came along, but she walked out mid speech in high dudgeon after an impromptu *Chaser*-like spoof at her expense. We followed up with more noisy rallies the following year, again attended by TV crews. Delia could be seen watching from a window. Famously, on one occasion Gapper ducked for cover behind a bench at the reception, when we went in to ask if we could meet her. But in the end we did persuade Government that something had to be done. Jean and I attended a meeting with Health Department officials to offer our advice, but sadly, it turned out to be more of the same. Healthquest was closed, its services were outsourced to a panel chosen by the general manager’s office and hired guns continue to earn good money. So we had to take a different tack by telling whistleblowers how to outwit employers and hired guns alike. This, like Jean’s papers, has proved to be the more enduring reform.

Looking back, Jean was trying to usher in new blood into WBA from late 1995 before she stood down from the presidency, but it would be the end of 2006 after a further four years as president that she would be allowed to let us go. At that time Jean told me her mother had died with dementia and she thought it would be her lot too. I agreed to help put a succession plan in place, but it wasn’t until the end of 2009 at our conference that I realised that the Jean of old was not with us any more. She’d been very keen to go to the Adelaide conference, because she wanted to visit Tony Grosser at Yatala Prison. Jean had supported Tony throughout his ordeal and ap-

peared as an expert witness for him in his case. I realised Jean was still tying up those loose ends, not wanting to leave things undone.

At Jean’s memorial service her son talked about how his mother always taught them that letting off some hot air was not enough. She said if you thought something was wrong and needed changing then you got in and did it. Well Jean did that in spades in every part of her life. She knew when the time was ripe for change and didn’t sit around waiting to be asked. The Mort Bay foreshore is open to all. Ballast Point, formerly a refinery, is a beautiful park used by locals and tourists alike. Rozelle Hospital and its park remain in public hands, because of the work of “Friends of Rozelle”, an organisation that she initiated. WBA continues to help hundreds of whistleblowers. She never stopped organising and getting others on board and getting it done. She inspired us. She gave us good advice and leadership. We are a part of her legacy and the future.

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## Jean and whistleblower support

Brian Martin

In the early 1990s, I was contacted by John McNicol, who had set up a group called Whistleblowers Anonymous, based in Canberra. At the time, I had been studying suppression of dissent for over a decade, and hence had a great interest in whistleblowing. It was through Whistleblowers Anonymous that I first made contact with Jean Lennane, a psychiatrist who in 1990 had lost her job in the New South Wales health system after she spoke about the consequences of funding cuts to mental health services. She opposed closing institutions for people with mental illnesses when government policies were inadequate to support them, with many of them ending up homeless or in prison.

In March 1993, there was a two-day conference in Canberra, at the National Library. The first day was organised by Isla MacGregor, Shirley Phillips and me; we had set up Dissent Network Australia to provide support for dissenters. The second day was on whistleblowing. Prior to the confer-

ence, there was a board meeting of Whistleblowers Anonymous. I remember the introductions, during which each individual told a bit about themselves — and sometimes quite a lot. The stories were amazing in revealing a pattern of reprisals and the failure of formal processes and watchdog agencies.

Jean was at this board meeting, but she did not say a whole lot about her own case. Unlike some others who obsessed about their treatment for years, often with good reason, Jean was more interested in getting on with her life, including by helping others.

Later in 1993 the group's name was changed to Whistleblowers Australia — the idea was that whistleblowers should not have to remain anonymous, given suitable protections. (Furthermore, just as members of Alcoholics Anonymous try to stop drinking, the name Whistleblowers Anonymous might have suggested members were trying to give up whistleblowing!) Jean became the president and set about sorting out the group.



Meeting of anonymous whistleblowers

One of the problems was with the group's founder, John McNicol. He liked to big-note himself and was prone to spending money unnecessarily. Jean had put in some of her money to support the group, but was offended when McNicol wasted it. She demanded the money back, and before long McNicol left the group. He apparently had a history of pulling out of groups he had set up.

Jean became one of my most trusted advisers concerning whistleblowing matters. She had a great knowledge of whistleblower cases across the country, was highly sceptical about official channels — going so far as to say that you can rely on them *not* working — and provided valuable comments on some of my writings.

In the latter half of 1995, Jean wanted to stand down from being president of Whistleblowers Australia, and recruited me to the position. She

briefed me comprehensively. We had lengthy discussions about the national network, priorities for the organisation, and internal conflicts. She kept a high profile as vice president.

Jean was a delegate from Whistleblowers Australia on a state police integrity group called the Internal Witness Advisory Committee, set up in 1995, the same year that the royal commission into the NSW Police commenced. The committee included representatives from the St James Ethics Centre, the Independent Commission Against Corruption, the Internal Witness Support Unit (IWSU), the Police Professional Standards Unit — and two from Whistleblowers Australia. The official purpose of the committee was to support police whistleblowers. Accompanying Jean from Whistleblowers Australia on the committee was Debbie Locke — a police whistleblower herself — and later Cynthia Kardell, currently president of Whistleblowers Australia.

Jean had an original idea for research. It involved collecting data about three distinct groups of police: (1) whistleblowers registered with the IWSU; (2) police, matched for age, sex and rank, not involved with whistleblowing (the controls); and (3) whistleblowers, namely police named by whistleblowers as involved in wrongdoing.

By plotting the career trajectories of each of these groups, it would be possible to assess how healthy the police force was, in relation to corruption. If whistleblowers fell behind the controls in career progression, while the whistleblowers thrived, the organisation was unhealthy. If whistleblowers thrived, it would be a sign of health. Research along these lines was actually carried out by independent researchers managed by the IWSU and — as expected — the NSW Police did not show many signs of health. Senior police did not like the results.

During my time as president of Whistleblowers Australia, 1996–1999, Jean was a highly supportive vice president. As president, I soon discovered that when people have a problem, they prefer to go straight to the person at the top, so I started hearing from far more whistleblowers than before and learned a lot as a result.

At that time, there were several challenging issues within the organisation. There was a bitter split within the Victorian branch, and some of those on each side contacted the national committee seeking support. Furthermore, there were some personality clashes and disputes involving national committee members. In dealing with these problems, Jean was the ideal level-headed adviser. We had many phone calls in those years, and a fair bit of our time was spent discussing individuals within WBA and their demands and difficulties. Jean was instrumental in helping WBA survive through those turbulent years in the late 1990s. She would often use her insights into people's psychology to suggest ways of dealing with conflicts.



Whistleblowers can have conflicts too.

Meanwhile, she had her own issues to pursue. As well as her special interest in police whistleblowing — of special relevance in 1995–1997 during the NSW Police Royal Commission — she was active on the issue of paedophilia; there were allegations of cover-ups in high places. Jean kept busy writing letters to various official bodies, obtaining media coverage and keeping tabs on whistleblowers across the country. Furthermore, Jean generously offered her home as the venue for several meetings of the national committee, and on more than one occasion offered a bed to those coming from a distance. She also generously supported WBA financially, always in a quiet way, so few knew about it.

At the end of 1999, I stepped down as president due to other commitments, and Jean again took over as president. For whatever reason — no doubt Jean's leadership played an important part — the following years were



steadier for WBA, with a strong national committee and fewer conflicts. One bonus was that Jean and I didn't need to consult so frequently; she was carrying the main burden.

It was a great loss when Jean developed dementia and, from about 2007, could no longer participate in WBA. I, like many others, will continue to miss her.

## What happens to whistleblowers, and why

Jean Lennane

This is an extract from a paper published in Klaas Woldring (editor), *Business Ethics in Australia and New Zealand: Essays and Cases* (Melbourne: Thomas Nelson, 1996), pp. 51–63, based on a research paper presented to the Whistleblowers Conference, Canberra, 27–28 March 1993. It was reprinted by the journal *Social Medicine* in 2012 as a classic paper in the field. Read the full article at [http://www.bmartin.cc/dissent/documents/Lennane\\_what2.pdf](http://www.bmartin.cc/dissent/documents/Lennane_what2.pdf)

Major problems have occurred and continue to occur for us in society because of our failure to deal appropriately with the *principled organisational dissenter*, who is usually blowing the whistle on what we may call the *unprincipled organisational deviant*. An outstanding example of this in NSW was the failure of the medical profession, the coronial system, the College of Psychiatrists, and the NSW Health Department to deal with the late Dr Harry Bailey [who used a dangerous treatment, called deep sleep therapy, on patients at Chelmsford Hospital in Sydney]. People who tried to blow the whistle on what was happening at Chelmsford were ignored and/or victimised, while his activities continued unchanged for some twenty years. Costs of this failure were:

- 26 deaths, and a number of people with permanent brain and other damage
- Chelmsford Royal Commission, at a cost of \$13 million (money not therefore available for useful services), and very damaging publicity
- medical indemnity insurance

viability threatened by damage suits, and skyrocketing premiums for doctors (costs which will be passed on to consumers)

- reputation of and public trust in the medical profession eroded; cuts in health staffing, services, and benefits now correspondingly easier for the government to impose

A survey was carried out in 1993 under the auspices of Whistleblowers Australia (WBA) of 35 subjects who had blown the whistle on corruption and/or danger to the public, in a period of less than two years to over twenty years ago. They came from a range of occupations: banking/finance, health, law enforcement, local government, transport, teaching and miscellaneous public service, state and federal. Their estimate of the cost of the corruption to the taxpayer was thousands of dollars (14%), hundreds of thousands (17%), 1–30 million (26%), and hundreds of millions (9%) — the banking/finance cases.



Danger to the public included disease/contamination, unsafe hospital equipment, unsafe aircraft, unsafe railways, licensing of incompetent drivers, child sexual abuse, arson/sabotage and unsafe working conditions. Other items also classified under danger to the public were wrongful eviction from homes, insider trading, and immigration rackets.

The organisation's response to the whistleblower is very powerful and follows a recognisable pattern. It is crushing in its intensity, as the organisation can use as many staff as it takes, for as long as it takes, to wear the lone whistleblower down. There is almost always some kind of discipli-

nary action, often on "unrelated" matters, up to and including dismissal. (The employer's ability to take action on allegedly unrelated matters is a major barrier to effective whistleblower protection legislation.) In the WBA study, 20% were dismissed and 14% were demoted; 14% were transferred (to another town, not just within the department); 43% were pressured to resign; and 9% had their position abolished.

There is often some kind of legal action, for example defamation suits, or use of the Official Secrets Act, if it applies. The main legal action in Australia seems to be threatened defamation action — this occurred in 20% of cases.

While the person remains in the job, informal tactics are used almost invariably. In the WBA study, these included:

- isolation — from the usual channels of information and consultation (49%); or maybe physical (23%), for example being put in a room with a desk and chair, no telephone, and not allowed to leave it without permission (or in one case, in a separate building with no one else in it)
- removal of normal work (43%)
- abuse and denigration, formal and informal, usually by supervisors, who may also encourage other employees to give the whistleblower a hard time (43%)
- minute scrutiny of timesheets and work records, inspections, adverse reports sought from previous employer (34%)
- demanding or impossible orders (26%)
- referral for psychiatric assessment/treatment (37%, plus an attempt to do so in another 9%)
- repeated threats of disciplinary action (20%)

Other items reported in the WBA survey, less frequently, were other types of harassment, assignment of menial duties, denial of benefits, denial of access to site, removal of files, death threats, fines, internal inquiries, falsification of records, and unrelated charges.

This victimisation usually continues until the whistleblower is dismissed, resigns or retires early. At the time of the WBA survey, only 10% of those who had been working for the organi-

sation they blew the whistle on were still working in the same position. A common outcome was to resign or retire because of ill health related to the victimisation (29%). At the time of the study, only 29% were working full-time for any employer, 29% were unemployed, 6% were working part-time, 11% had retired and 6% were on the invalid pension.

### The organisational response

The organisational response is orchestrated as well as powerful. In most cases it is also very fast. All the subjects in the WBA survey had started by making a complaint internally, through what they believed were the proper channels. In three cases (9%), the complaint did not go further than that. In thirty-two cases (91%), after the internal complaint failed, the subjects complained to some outside body, for example local parliamentarian, union, ombudsman. They went public, to the media, only after that too failed. Only 49% had ever been to the media. But in 83% of cases, the victimisation occurred immediately the first internal complaint was made. In some cases it had started before, for example when the whistleblower had refused a bribe. This is in sharp contrast to the usual view of whistleblowers — that they are publicity-seeking ratbags who rush off to wash dirty linen in the media on very slight provocation.

The organisation's response may involve the whistleblower's trade union if other members on that site are actively involved in the original malpractice or in persecution of the whistleblower; or the hierarchy of the union may have connections with management who are corrupt, or have an interest in keeping the matter quiet. In the WBA survey, while 6% of subjects found their union "helpful," 17% found them "harmful," and 23% "neither helpful nor harmful" or "useless."

I believe that such a response indicates the activity the whistleblower is complaining of is endemic/accepted within the organisation. I am gradually becoming convinced that the occurrence of a powerful response means that corruption includes top management. (This apparent correlation may in fact simply be a reflection of the

pervasiveness of corruption in top management at the present time. It would be interesting to test it in a country where high-level corruption is not endemic — always supposing such a place exists!).

The organisational response to whistleblowing is not new. The traditional treatment of mutineers has always been similarly very savage, as a challenge to authority that can never be allowed, whatever the provocation. Heretics received similar treatment in the days when the established church had more authority than it does now; the political dissenter under a totalitarian regime is now treated in similar fashion — in the former Soviet Union, this included the systematic misuse of psychiatry (very reminiscent of the misuse which Australian whistleblowers experienced), where dissent from government policy was the sole and sufficient symptom of a disease not recognised in other countries — "creeping schizophrenia". On a smaller scale, but reflecting essentially the same process, the incest victim challenges the system of family authority, and unless specifically supported, is likely to experience the same destructive response.

The aims of the organisation's response are:

(1) to isolate the whistleblower by removal from the accepted "in-group" (one of us) to "out-group" status, by representing the whistleblower as:

- incompetent
- disloyal
- a ratbag
- mentally unbalanced/ill

(2) to frighten others who might otherwise support the whistleblower

(3) to avoid examining or remedying the issue the whistleblower is complaining about

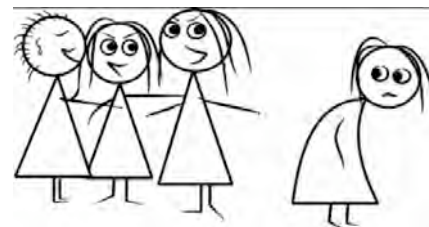
This had largely been achieved in the cases in the WBA survey. The wrongdoing continued unchanged or increased in 71% of cases; the wrongdoers were promoted (26%) or had nothing happen to them (60%); minor disciplinary action against wrongdoers occurred in 14%, but there was only one case of any disciplinary action against a wrongdoer without others involved in the same activity being promoted. In contrast, the whistleblowers were left to struggle with massive financial loss — 40% had a

reduction of 75% or more of their income, and 49% estimated their personal financial loss (including legal and medical costs, loss of income, superannuation etc.) in the \$100,000 to \$1 million range. At the time of the study, their physical and mental health was now poor, and their careers in ruins.

Their families suffered with them: thirty whistleblowers had a total of seventy-seven children between them. Of those, sixty (78%) were said to have been adversely affected — by divorce and forced separations; poverty and financial stress; disrupted education; anxiety; insecurity; stress; anger and loss of faith. In one case the family was unable to go out because of the risk (father having a contract on his life and being under police protection); other cases involved a death-threat letter addressed to a six-year-old by name; pets killed as reinforcement to a death threat; and public attacks on the parent's image.

### Whistleblowers and workmates

One of the most distressing experiences for most whistleblowers is the lack of support, and sometimes active victimisation, from workmates. Particularly distressing are acts of betrayal by people who previously were close to them.



There is usually some support, but this is often covert. It is not uncommon for workmates to express support and approval if they are alone and unobserved, for example if they meet the whistleblower in a lift, but to walk past without acknowledgement if they meet in an open corridor. In the WBA survey, open or even secret support from most or some workmates occurred in less than half the cases; from few or none in over half. Ostracism, active victimisation and betrayal occurred to some degree in about three-quarters. Overall, it seems most workmates play it safe.



### Corruption of protection agencies

A very important issue is the corrupting process that is likely — possibly inevitably — to affect investigators and whistleblower protection agencies. It is almost universal experience that bodies which have been set up to redress injustice of this kind gradually become part of the authority system themselves, hence useless to the whistleblower. Most royal commissions turn into whitewashes. Sometimes they were set up to do just this, but often were not; they become corrupted by close contact over a long period with the culture in question.

Apart from the seductiveness and contagiousness of corruption, there is also the practical issue of career and personal advancement within the larger bureaucracy of which the protection agency is necessarily a part. A protection officer who makes life too difficult for other bureaucrats is unlikely to achieve advancement in any other department, and prospects for promotion if confined to their own agency will be very limited.

### Advice to whistleblowers

So what should potential whistleblowers do, given the power, inflexibility and irrationality of the system they face? Advice from whistleblowers in the WBA survey (apart from 20% saying “don’t”) was along the lines of being prepared. Have everything documented, with tapes and videotapes if possible; learn the legal aspects before you start; trust very few people, particularly politicians; try to remain anonymous; get outside help; don’t expose yourself to the employer, but go straight to an outside agency. Other things that became clear from the survey were that the outside agency would be unlikely to help, and might even be harmful; and while I would hesitate to advise people definitely at this stage on the basis of one relatively small survey, it may well be that in fact the best thing to do is what whistleblowers are so often unjustly accused of doing — go straight to the media, without trying the potentially extremely risky course of making the first complaint through the proper channels. It is very important for whistleblowers, when considering making a complaint, internal or external, to line up support for themselves

before they start. The most reliable support will come from outside the organisation — support from within is likely to crumble once a typical employer reaction starts. A body such as Whistleblowers Australia is useful, not only for general support and advice, but also in some cases to take whistleblowers’ information to the media or outside agencies, rather than them having to take the risk of doing it themselves. There are at least two important psychological considerations in having the matter raised externally to start with: first, that since one issue is the indignity of having imperfections in the organisation pointed out by a “traitor” within it, particularly since that person is usually in a relatively lowly position, it may in fact be easier for management to approach the matter realistically if the person who first raises it is an outsider; second, that even if it is fairly obvious who the informant is (as it often will be, no matter what precautions are taken), the appearance of an outsider right from the start removes the perception of the whistleblower as a lone eccentric who will be easily disposed of by a concerted attack. The more and sooner the very unequal power relationships can be seen to be altered in the whistleblowers’ favour, the less unfair their treatment is likely to be.

A very important piece of advice for whistleblowers, which they ignore at their peril, is never to use an official, internal “anti-corruption” body for anything but the most trivial matter, and preferably not to risk using it even then. Internal anti-corruption bodies often seem to aim to trap and weed out actual and potential whistleblowers rather than do anything except produce glossy brochures on weeding out the corruption itself.

Another important piece of advice is that at all stages whistleblowers and their supporters have to be prepared for the long haul. It was clear from the survey that the damage done to the whistleblower, and particularly to the family, increases as time goes on. The children said not to have been damaged were all from cases that had been going less than four years. Even four years, of course, seems an incredible length of time to whistleblowers in the early stages — they assume it should be resolved in a few

weeks or months. It won’t be. The legal system, and statutory authorities, work on a time scale where three months to answer a letter is reasonable, and indeed rather fast. It is exceedingly difficult, even when both sides want a matter settled, to achieve it expeditiously. When one side does not want it settled, or indeed to get into open court, and that side has the power and money, it can be drawn out almost indefinitely, for as long as necessary to exhaust the whistleblower’s emotional and financial resources. The industrial court system is less unwieldy, and is therefore the best option for whistleblowers, as long as they can get support from their union.

### Advice to management

The basic question that has to be decided by management is one of ethics, and if top management is not corrupt, that question is relatively simple.



Corruption is like white-ant infestation — silent and unnoticed until part of the structure collapses; but once it is found somewhere in a building, it must be assumed to be everywhere until proved otherwise. Bosses who refuse to recognise this must, I believe, be assumed to be part of the problem, that is actively involved. They may in fact simply be naive, but more often, I believe, they are corrupt.

But in the end, it comes back to ethics — in management and in the general workforce; an acceptance that corruption, financial or otherwise, is damaging both to the organisation and to the whole community; and that whistleblowers represent an important and valuable resource in helping to keep standards the way we would like them to be.

### Kill the messenger ... but not the message

Kim Sawyer

When a whistleblower watches a film about whistleblowing, there is resonance. I remember when I first watched *Silkwood* years before blowing the whistle, I identified with the risk of nuclear power the film exposed, but not with Karen Silkwood. But when I watched *Silkwood* last year, I identified with Karen Silkwood. If nothing else, blowing the whistle establishes a bond with all other whistleblowers, a bond underwritten by a script that is nearly always the same.

*Kill the Messenger* is the latest whistleblowing film in a genre that has included *The Insider*, *Khodorkovsky*, *Veronica Guerin*, *The Whistleblower*, *Petition*, and *Erin Brokovich*. This genre has quite a pedigree, and quite a diversity of context; but the theme is the same. Like all whistleblowing films, *Kill the Messenger* is the story of the pursuit of truth of a singular individual against a network of wrongdoing. And, as in most other whistleblowing films, the whistleblower pays the price.



The messenger in *Kill the Messenger* is a Californian journalist, Gary Webb, who wrote a series of articles entitled

*Dark Alliance* for the *San Jose Mercury News* in 1996. The truth Webb was pursuing was the involvement of the CIA in shipments of cocaine into the United States by US-backed Contras, the rebels who were opposing the Ortega government in Nicaragua during the 1980s. At its core, Webb was alleging that drug sales financed the Contras, and the Reagan administration was the implicit collaborator. Webb was an old-style investigative journalist who began investigating corruption in Cleveland in the 1980s. The Contras story fell into his lap via a Grand Jury transcript, and from there it was a process of discovery. Webb interviewed drug dealers, lawyers and bankers in Los Angeles, Managua and Washington; he joined the dots that should have been joined, the dots that others were unwilling to join. And he paid a very high price.

When the story first broke, Webb was the journalistic hero, nominated for the Bay Area journalist of the year, a remake of Woodward and Bernstein. But Webb did not have the network of Woodward and Bernstein. He came from a small newspaper in a small city, a lone reporter with limited resources, with only the qualified support of editors who were unqualified for the task. And he was up against the CIA. When the corrupt network targeted Webb, he experienced the inversion all whistleblowers experience. His career inverted from journalistic hero to the journalist without a portfolio. Colleagues and editors became bystanders; liberal newspapers like the *Washington Post* and *New York Times*, which should have supported him, joined the scapegoating; he was after all a competitor. He was smeared, his family life dissolved, and he was harassed. What happened to Gary Webb was textbook retaliation against a whistleblower, and it was effective. The film shows the dissolution of Webb's life, the dissolution all whistleblowers relate to. It shows, better than most whistleblowing films, the role of the bystander. Those who should have been more loyal were disloyal.

Webb's assertions appear to have been subsequently verified by inde-

pendent investigations by the *Los Angeles Times* and *Chicago Tribune*, and by the CIA's own Inspector-General. But those verifications did not save his career or his life; he never worked in mainstream journalism again and he committed suicide in 2004. In 1999, Webb published a book based on the three articles of *Dark Alliance*. However, *Kill the Messenger* appears to be his main legacy. Based on a book of the same name by journalist Nick Schou, *Kill the Messenger* shows the inversion of whistleblowing better than most other films. At times it was wrenching to watch, as Webb is sucked into the vortex of whistleblowing.

Whistleblowers can gain many insights from this film, but three are notable. First, *Kill the Messenger* provides an insight into the journalist as a whistleblower, and not just as a conduit. The journalist as a whistleblower is subject to the same targeting as their sources. Secondly, *Kill the Messenger* illustrates media competition at its worst. The media industry trades off competition with ethics, just as other industries do. For newspapers of repute like the *Washington Post* and *New York Times*, their ethics went missing in this film. The implication is clear. When a whistleblower approaches a journalist, rival newspapers are competitors, not just for the journalist but also for the whistleblower. Whistleblowers usually ignore this competitive risk. Thirdly, *Kill the Messenger* highlights the risk of an unaccountable national security agency. It is an apt warning. Recent legislation in the Federal parliament to extend the powers of our national security agencies is of concern. It is not in the interest of national security to render our national security agencies unaccountable. Gary Webb proved that point.

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## Leaking: practicalities and politics

Brian Martin<sup>1</sup>

WHEN you want to reveal information in the public interest, consider leaking. To be effective, you need to be very careful and to understand both practical and political aspects.

Whistleblowing is speaking out in the public interest, for example about corruption, abuse or hazards to the public. Most whistleblowers reveal their identity, and many suffer reprisals. Therefore, in many situations it is more effective to remain anonymous and leak. This can be called anonymous whistleblowing or public interest leaking.<sup>2</sup>

There is a serious double standard in leaking. Many politicians and top bureaucrats leak information to the media, often for personal gain or to sound out policies. Such leaks are seldom investigated and never prosecuted even when they are illegal.<sup>3</sup> However, when lower-level workers leak, this is commonly portrayed as a serious transgression and sometimes investigations are undertaken to identify the leaker. One of the main purposes of such investigations is to deter other workers from becoming leakers. It may be the only reason.

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For useful comments, I thank AJ Brown, Kathy Flynn, Simon Frew, Brendan Jones, Cynthia Kardell, Ted Mitew, Ben Morris and others who prefer to remain anonymous.

<sup>2</sup> This article draws on ideas in Brian Martin, *Whistleblowing: A Practical Guide* (Sparsnäs, Sweden: Irene Publishing, 2013), chapter 8. Available at <http://www.bmartin.cc/pubs/13wb.html>

<sup>3</sup> David E. Pozen, "The leaky Leviathan: why the government condemns and condones unlawful disclosures of information," *Harvard Law Review*, vol. 127, 2013, pp. 512–635, describes the US federal government's tolerance of leaking by high-level officials, especially in the area of national security.



The focus here is on leaking in the public interest. It can be a powerful way to challenge damaging and dangerous activities carried out in secret. There are three main reasons why it can be worthwhile for whistleblowers to remain anonymous. First, reprisals are less likely: if authorities do not know your identity, they can't take action against you. Many whistleblowers who reveal their identity are met with petty harassment, ostracism, assignment to trivial duties, assignment to onerous duties, hostile rumours (for example of poor performance, crimes, mental disorder or sexual activities), forced transfers, reprimands, referral to psychiatrists, demotions, dismissal and blacklisting. After reprisals begin, life becomes very difficult. Many whistleblowers suffer in their careers, their finances, their health and their relationships. Therefore, it is better to avoid reprisals if at all possible.

Second, remaining anonymous means you can stay on the job and continue to collect information and leak. As soon as you are identified, your access to sensitive information will be blocked. Furthermore, efforts will be made to hide or destroy information about wrongdoing.

Third, by remaining anonymous, attention is more likely to be on the issues revealed than on the person making the claims. Employers prefer to turn the spotlight on whistleblowers, including their personalities and alleged flaws, as a means of distracting attention from wrongdoing.

Even if you decide to reveal your identity, it is often worthwhile waiting for months or even years while you collect plenty of information. As a rule of thumb, you need ten times as much information as you think you do. This is because wrongdoers will try to discredit you and the information in every way possible. For example, they

will deny authorship of documents, say their words were taken out of context, say the policy wasn't actually implemented, or that they were joking.

Another advantage in waiting is that you are less likely to be suspected of being a potential whistleblower.

If you decide to serve the public interest by collecting information and making it available to outsiders, you need to approach this task with great care. You are undertaking a vital activity, but it is likely that opponents will try to discredit or even destroy you. So you need to learn how to be effective.

### Whistleblower protection

In Australia, there are various laws intended to protect whistleblowers when they make "public interest disclosures." In some cases, giving information to journalists or activists is legally protected. However, in practice, employers often treat whistleblowing as illegitimate, even when it is entirely lawful.

Legal protection is not a guarantee against reprisals. Furthermore, employers are almost never held to account for taking reprisals against whistleblowers, even when they are supposed to be protected legally. The lesson here is not to rely on whistleblower laws: they may give only an illusion of protection.<sup>4</sup> This is why remaining anonymous is often a better option.



An illusion of protection

<sup>4</sup> Brian Martin, "Illusions of whistleblower protection," *UTS Law Review*, No. 5, 2003, pp. 119–130.

Even though many employers do everything they can to discredit and undermine whistleblowers, there is considerable support in the wider community for speaking out in the public interest. By acting responsibly — for example, limiting damage to third parties — whistleblowers can maximise their credibility with co-workers and wider audiences. It is valuable to remember that whistleblowing is about serving the public interest, not personal agendas. If you are doing this, you deserve support and admiration. When your employer initiates reprisals, it is valuable to remember that you are doing the right thing.

### Problems and penalties

In every part of society, there are problems that need to be addressed. They include business swindles, hazardous chemicals, abuse of people with disabilities, paedophilia in the churches (and elsewhere), harm to prisoners, tax rip-offs, nepotism, unfair tax laws, environmental damage, and a host of others. All deserve attention and action.

Perpetrators usually prefer to operate in secret. Whistleblowers, whether they are open or anonymous, can play an important role in exposing the problems. Sometimes, disclosures cause wrongdoers to halt their activities.

The risks from speaking out are much greater in some areas than others. Probably the most risky areas are organised crime, the military, the police and national security. The problems are not necessarily more serious, but the power of the wrongdoers to impose reprisals is much greater.

National security is an exceptional case, because governments have enormous power and can use it to abuse human rights and avoid accountability. Anti-terrorism laws give governments power against dissent that is far beyond what is warranted by the dangers involved. For example, some pharmaceutical drugs, with known dangers, cause tens of thousands of deaths, far more than the death toll from terrorism.<sup>5</sup> Yet the penalties for

challenging anti-terrorism laws far exceed the penalties for speaking out about crimes by the pharmaceutical industry.

When penalties for dissent are excessive, it is all the more important to reveal problems, and to do so with the greatest care. To be effective in exposing problems, it is worthwhile learning from dissenters and opposition movements in repressive regimes.

### The Australian national-security connection

In 2014, the Australian government passed draconian anti-terrorism laws with extreme penalties for whistleblowers and journalists — up to ten years in prison — who reveal information on certain national security matters. Whether these laws will actually be used remains to be seen, but they are obviously intended to deter public interest leaking and reporting. They will also enable abuses to be committed with impunity and hence make exposure even more important.

Whistleblowers in other fields seldom face such extreme penalties, but speaking out still can be risky. There is much to learn from the challenges facing dissidents in high-security areas.

### Learning from challenges to repressive regimes

Many governments in the world are highly repressive. They do not allow dissent, and may harass, arrest or even kill opponents. Despite the dangers, courageous citizens take action in support of political freedom. It is possible to learn from these challenges to repressive regimes.<sup>6</sup>

Repressive regimes often provide some official means for citizens to express discontent. It is possible to write to the government, though this seldom has any effect. Often there are elections, but these are rigged. Often most of the mass media are controlled by the government, or limited in what they can say. Information about alternatives is restricted. Trying to change the system by lobbying or voting is fruitless.

The most effective challenges to such governments involve a wide range of non-standard methods of action, such as rallies, strikes, boycotts and occupations. Campaigns relying on such methods are more effective than armed struggle.<sup>7</sup> There are several features of such campaigns worth noting.



Protesters in Peru, 2011

Widespread participation in actions is important. Mass rallies are one example. However, when joining a rally is too risky, there are other options. In Turkey in 1997, at the initiative of the Citizens Initiative for Constant Light, at a particular time in the evening people turned off their lights as a symbol of resistance. In Poland under military rule, the government's official news was broadcast at 7pm. To express their opposition in a safe way, many citizens went for a walk at this time, some with their televisions in prams. The more repressive the regime, the more important it is to find methods of opposition that involve only a small risk, so many people can join.

It is also important that many different sectors of the population participate. If the opposition is based on a single group, such as students or workers, it cannot easily build into a mass movement. Involving different groups also brings in more ideas about resistance, making the movement more flexible and creative.

Campaigns against repression need to be resilient: they need to be able to survive government attacks. One implication is not to depend too much on leaders, who can be discredited, arrested or even killed. A decentralised, network-based system for decision-

<sup>5</sup> Peter C. Göttsche, *Deadly Medicines and Organised Crime: How Big Pharma Has Corrupted Healthcare* (London: Radcliffe, 2013).

<sup>6</sup> See "Resisting repression: resources for defending Australian freedoms," [www.bmartin.cc/dissent/documents/rr/](http://www.bmartin.cc/dissent/documents/rr/).

<sup>7</sup> Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York: Columbia University Press, 2011).



making and action is better for survival. Large organisations, with investments in facilities, staff positions and official credibility, have more to lose and can more easily be harassed.

Alliances are crucially important. Governments often use divide-and-rule techniques. They demonise certain sectors of the population, such as trade unionists, religious minorities or students, sometimes labelling them terrorists or subversives, and attack them directly or via proxies. Other sectors of the population, rather than support the targeted group, instead look to the government for protection, thereby cementing its power.

In this context, whistleblowers can play a valuable role. Those who are inside the government apparatus, for example in the police, military or security services, can provide information to opposition groups. Useful sorts of information include evidence of government abuses, plans and methods. For example, when opposition groups know about government plans to infiltrate and discredit them, they can better prepare their actions and systems.

### Dissent is risky

In a repressive regime, speaking out can be very risky, potentially leading to arrest and imprisonment or worse. In less repressive places, there is greater tolerance for free speech and political protest. Yet speaking out can still be risky. The greatest danger is from employers.

Large organisations, such as government departments, corporations and churches, are usually structured on the principles of hierarchy and division of labour, in a form that sociologists call bureaucracy. The military is a classic bureaucracy, with a rigid line of command. In a bureaucracy, workers are interchangeable cogs.

Large organisations like this are undemocratic.<sup>8</sup> There is little or no free speech. Leaders are not accountable through elections, and opposition

movements are often not allowed. Basically, a large bureaucratic organisation is similar to an authoritarian state.<sup>9</sup> This helps explain why whistleblowing is so risky. A whistleblower is similar to a lone political dissident in a repressive regime, which is why whistleblowers can learn from techniques for political dissent.

Imagine standing alone against a dictator — it's brave, but seldom a good strategic move. It's usually more effective to be part of a movement for change. When you have allies, you are safer and there's a better prospect of success. There is strength in numbers, and also many more skills, resources and contacts.

If there is an organised opposition movement within your workplace, this is a good place to seek allies. If not, then look outside the organisation, for example to action groups on the environment, health, honest government, human rights, social justice or whatever is most relevant.

If you are on the inside, with information, and others are on the outside, with resources and capacity to take action, you can contribute most by linking up with those on the outside. By remaining anonymous, you can provide information on an ongoing basis.



### When leaking is not a good idea

Leaking is only possible and suitable in certain circumstances.

- If you've already spoken out, and especially if you've already suffered reprisals, you have limited opportunities for obtaining inside information

and leaking it anonymously. So being public might be better.

- If you are the only person with certain information, you probably won't be able to remain anonymous: you will be identified immediately. So it might be better to gather more information before leaking, or first obtain a new job.

- To be an effective leaker, you need to be an actor: you need to behave like you do normally. If there is a witch-hunt for the leaker, you need to pretend that you are not the leaker, and to tell lies if necessary. If you're not able or comfortable doing this, leaking may not be for you. To be really effective, you may need to join the search for the leaker and even contribute ideas to how to track down the leaker.

- Sometimes leaking may put you and others close to you in serious danger. In such situations, you need to balance benefits and costs, and consider different strategies.

Strangely enough, when the danger is high, it may be safer to reveal your identity, because more people will know you have spoken out and will be aware if anything is done to you. For example, sometimes witnesses to crimes by criminal syndicates are put in supposedly safe locations under police protection. But if the criminals have infiltrated the police, then your life can be in danger and no one will know. If you are a public face, you might actually be safer.

### Who can receive leaks

There are several potential recipients: journalists, activists, WikiLeaks and similar services, and the public directly.

**Journalists** can use your information to write stories and publicise problems. You can remain completely anonymous by sending material by email or post, or you can talk via a safe phone, or you can agree to meet. How much personal contact you make with the journalist depends on several factors, including how much you trust the journalist, how risky it is for you to have your identity known to anyone, and how much you want to build a relationship for ongoing leaks.

The best sort of journalist to contact is one who has a good reputation and a track record of exposing problems. It is important to remember that journalists

<sup>8</sup> Bruce Barry, *Speechless: The Erosion of Free Expression in the American Workplace* (San Francisco: Berrett-Koehler, 2007); David W. Ewing, *Freedom Inside the Organization: Bringing Civil Liberties to the Workplace* (New York: Dutton 1977).

<sup>9</sup> Deena Weinstein, *Bureaucratic Opposition: Challenging Abuses at the Workplace* (New York: Pergamon, 1979)

and their editors seek stories they judge newsworthy, for example involving conflict, personalities, local relevance and current events. If your material is too old, too technical, too complicated or too risky — risky because it might open the news outlet to legal or government reprisals — then there may be no story, or only an inadequate one. Look at what other stories have been run to see whether your material fits the usual mould.

An inexperienced or careless journalist may compromise your identity. Many journalists are seriously overloaded and therefore may not have the time to give your story the attention, care and security precautions it deserves.

If you have an ongoing relationship with a journalist, you should arrange codes and communication systems in case of danger, for example to cancel meetings at short notice or even to shut down contact altogether. Multiple methods of contact, for example email accounts in different names, can be useful.

Journalists should copy printed documents received and destroy originals, and similarly transform electronic files to eliminate identifying information, for example by putting them into plain text. Journalists should not keep files on site that can be obtained through a search warrant.

In Australia, anti-terrorism laws may deter journalists from covering some national security stories. One alternative: go to international media. Or go to activists, use leaking sites or publish the material yourself.



**Activists** can use your information in several ways. By providing insights into how your organisation works, they can better plan their campaigns. For example, if they know there are differences of opinion, or discontent, in your organisation, activists may be able to propose options or design protests more effectively. Especially important

to activists is information about the impact of their campaigns.

What sort of activist group? It depends on where you work. There are groups concerned about education, human rights, environment, labour, peace, welfare and a host of other issues. However, sometimes there's no suitable group.

Activists are less likely to be familiar with using leaked information. They may not have good systems to protect your identity. Proceed cautiously. It's probably better to approach an individual with a lot of experience, and someone with a reputation for maintaining confidentiality.

Remember that most people like to gossip. Knowing about a leaker may be a secret that is too hard for some to keep to themselves. If in doubt, don't reveal your identity. You can be an effective leaker by sending messages from an anonymous email account or putting documents in a mailbox.

Remember also that activists may be suspicious of you. They may worry that you are a government agent trying to mislead or entrap them. So proceed gradually, and provide information to establish your credibility. Or try one of the other options.

**Leaking sites** are a good option if you have important documents. A well-designed leaking site, like WikiLeaks, provides strong protection that your identity will not be revealed. Not all sites do this, so check out the site carefully. Another well established leaking site, predating WikiLeaks, is Cryptome.

Leaking sites may or may not give your material wider visibility. Too often, material just sits on the site and no one notices. So you may need to contact journalists or activists to let them know about the documents.

**Direct publication:** you can post material online. You can set up a website, a Facebook page or a blog, or you can put documents on a site like Scribd. Then you can notify journalists or activists or go directly to your target audience. For example, if you have email addresses, you can send messages to members of an organisation. The advantage of posting material — documents or written commentary or both — is that you control exactly what you want to say, without relying

on journalists or activists as intermediaries.



Choose recipients of your leaks very carefully. You may need to take as much care in selecting and cultivating journalists or activists as you do gathering material to give to them. Edward Snowden gathered a vast quantity of data about the US National Security Agency's spying operations, but that was the easy part. He carefully selected the journalist he wanted to receive the documents and then spent months trying to interest him in the story. His efforts paid off in the biggest stories imaginable. The lesson is to be selective in choosing recipients and to be patient and persistent in building a relationship with them.<sup>10</sup>

### Remaining anonymous

Leaking may seem dangerous because we read about leakers who were exposed, most famously Daniel Ellsberg and Chelsea Manning. Most leakers, however, remain anonymous as long as they want to — so we never hear about them.<sup>11</sup>

<sup>10</sup> Brian Martin, "Learning from Snowden," <http://comments.bmartin.cc/2014/06/26/learning-from-snowden/>. For informative accounts of Snowden's experience, see Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA and the Surveillance State* (London: Hamish Hamilton 2014); Michael Gurnow, *The Edward Snowden Affair: Exposing the Politics and Media Behind the NSA Scandal* (Indianapolis: Blue River Press, 2014); Luke Harding, *The Snowden Files: The Inside Story of the World's Most Wanted Man* (London: Guardian Books 2014).

<sup>11</sup> On leaking, see *The Art of Anonymous Activism: Serving the Public While Surviving Public Service* (Washington, DC: Project on Government Oversight; Government Accountability Project; Public



Remaining anonymous is possible, but it takes care, especially if you work in a sensitive area where security is taken seriously. Because each situation is different, there are no general rules about how cautious you need to be. What is important is to think through how others might track you down. Imagine that your boss, a workmate or an outside investigator were given the task of finding the leaker. What would they do? Or imagine that you were assigned the task of finding a leaker. How would you proceed? By thinking through steps likely to be taken, you have a better chance of avoiding traps.

Suppose the investigator goes into your computer and checks all your files and goes into your email account and checks all your messages. That means you shouldn't leave any trace of your activity on your computer or email. So pay cash to buy a cheap computer, for example a tablet or netbook. Make sure it is not connected to the web, disable GPS and do all your writing on it.



Buy a cheap tablet.

Go to a public computer (in a library or cafe) far from your home, taking along a USB from your separate computer, and send emails from a new email account. Or use free wifi in a busy place.<sup>12</sup> Avoid using social media

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Employees for Environmental Responsibility, 2002), especially pp. 7–16; Kathryn Flynn, “The practice and politics of leaking,” *Social Alternatives*, vol. 30, no. 1, 2011, pp. 24–28; Nicky Hager and Bob Burton, *Secrets and Lies: The Anatomy of an Anti-environmental PR Campaign* (Craig Potton, 1999), pp. 240–247. All available at <http://www.bmartin.cc/dissent/documents/rr/>.

<sup>12</sup> For even greater security, use a live USB-only operating system such as Tails (<https://tails.boum.org/>) and, for continuous posting, a VPN that doesn't collect data logs.

during this time, as it can compromise your anonymity.

If you plan to send files, avoid standard word-processing software; use secure open-source software instead, or put text into the body of emails. If you want to be ultra-cautious, hand-write your message and key it in at a public computer. Avoid locations where your presence can be recorded on closed-circuit TV monitoring and avoid car parks where your car's licence number might be recorded. If you're not sure about the location of security cameras, you can reduce risk by wearing sunglasses and a hat — as long as this doesn't make you more conspicuous. If you're having an ongoing conversation with a journalist, use a different public computer each time.

Suppose you've made a major leak and there's a massive hunt for the leaker. The police go into your house and take all your electronic devices — phones and computers. By this time you should have deleted all incriminating files from your computer, using a secure-delete function so even an expert cannot recover files. Even better, after deleting the files, you dispose of the separate computer entirely. Your regular home computer should never contain material relevant to your leaking.

Suppose the investigator obtains telephone company records and looks for a record of a call to a journalist or other recipient. You need a phone connection that can't be linked to you. So use public phones or arrange to use a secure open-source messaging system — not Skype — from a public computer (voice or text message only). Even safer is to avoid calls altogether, instead sending quick emails so your time online is limited.

If you want to copy documents, you need to be careful. Some photocopiers can be set up so that every copy has an identifying mark. So use a public

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For keeping Internet activity anonymous, you can use Tor (<https://www.torproject.org/>) and use an anonymous email site such as hushmail (<https://www.hushmail.com/>), not including any personal information. Spies can use network analysis to track the source of ongoing communication, so be careful about this approach for more than occasional use.

photocopier, or make multiple copies using several different photocopiers.

Even more devious is a process sometimes used for highly sensitive documents. Each recipient's copy has a slight difference in the text — for example, an insignificant word is replaced by a synonym — so that if the document is leaked, the leaker can be identified. This level of monitoring is unusual.

Usually you will not have to deal with sophisticated defences against leaking. At some national security offices, security is so lax that it's possible to obtain paper or digital files with ease.<sup>13</sup>



Very few police dogs are trained to detect USB drives.

A more common problem you will face is avoiding making simple mistakes. Many leakers are caught because they leave pages in the photocopier or leave their computer monitors open to confidential documents, or send emails from their work computer. If you avoid simple mistakes, you are pretty likely to be safe.

The same principle applies to online precautions: use methods with which you are familiar and comfortable, because you are less likely to make mistakes. If you've never used encryption, VPN or open source software, don't start just before you begin leaking. Instead, learn how to use these techniques well in advance, or just use something you've used before. Meeting a contact face-to-face, away from electronic devices, remains a dependable way of avoiding surveillance; arranging such meetings is the hard part.

Often it is better to leak information bit by bit, over a period of time, rather

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<sup>13</sup> For a revealing account, see Sibel Edmonds, *Classified Woman: The Sibel Edmonds Story. A Memoir* (Alexandria, Virginia: Sibel Edmonds, 2012).

than in one giant batch. When journalists or other recipients write stories, the publicity may encourage others to confirm information or leak new material, so the area of suspicion is diffused and investigators are confused. Furthermore, a drip-by-drip leaking strategy can lead to greater publicity, as stories continue to appear. Snowden's revelations had a greater impact because they were gradually revealed over weeks and months.

Another way you can be identified is through your words and behaviour. Ask an honest friend how good you are at keeping confidences. Chelsea Manning, who obtained and leaked one of the biggest collections of documents in history, may never have been caught except for talking about it. The lesson is to never tell anyone that you are the leaker — except maybe years or decades later when there is no risk.

After you have leaked, you need to pretend that you are not the leaker. You need to behave just as you would if you hadn't been the leaker. This is a form of acting. Contrary to popular opinion, research shows that most people can lie convincingly and that few people can detect lies, so you can probably do it well, especially if you believe in what you are doing.<sup>14</sup> It is legitimate to lie in a good cause, for example in occupied Europe during World War II when Nazis came to people's houses asking whether there were any Jews inside.



Pinocchio hides his revealing nose

Think through in advance how you would behave if you were told that someone else had leaked information from your section. (Maybe they did!) Then be prepared to act in the same way if you are the leaker. If you are convincing, you might even be put in charge of finding the leaker! Be care-

ful. Sometimes workers suspected of being leakers are sent material or given tasks as a means of trapping them, or sending them a warning.

### If you are discovered

If your identity as the leaker becomes known, you are likely to be subject to reprisals. If you are in a dangerous area, such as organised crime, police or military, you might be at risk of assault, frame-ups and imprisonment.

If you expect reprisals to be severe, it is often better to get out and go public. Accept that your career is over, leave the job (and avoid immediate reprisals), let everyone know you are a whistleblower and seek public visibility.

Andrew Wilkie worked for the Office of National Assessments. In March 2003, he publicly questioned the Australian government's rationale for joining the invasion of Iraq. Wilkie didn't bother complaining to his bosses or making an official disclosure. Instead, he went straight to the media with his message, resigning from his job. Wilkie was courageous in speaking out, sacrificing his career. He had maximum impact and avoided reprisals inside ONA. He could have been charged with a crime and gone to prison. Because he became well known — and gained many supporters — the government decided not to prosecute him.



Andrew Wilkie

The lesson from Wilkie's experience is that to have maximum impact and reduce reprisals, resign and seek

publicity and public support.<sup>15</sup> Don't rely on protection from whistleblower laws. They seldom work and often serve to reduce exposure of problems.

Many Australian public servants are afraid of speaking out because of the harsh laws against unauthorised disclosures, but these laws are hardly ever used. They serve mostly to scare workers into silence. You may be safer than you realise.

### Conclusion

Secrecy is justified as protecting the public, but often it serves to protect powerful groups from scrutiny, and sometimes is a cover for crimes and abuse. In such circumstances, exposure is a public service.

If you're going to expose problems, leaking can be the best option, especially when you can remain in the job and continue to leak. To leak effectively, you need to be cautious and patient, perhaps waiting months or even years after collecting information. You need to choose your recipients very carefully. You need to continue in your job just as you would if you were not the leaker. You need a plan to minimise potential damage to the recipient of your disclosures in case of discovery. If you are discovered, you need to be prepared to resign and go public.

As a leaker through all this, you will obtain no recognition — no praise from bosses or co-workers, and no personal publicity. You need to be satisfied in your mind that you are doing the right thing. Sometimes that is the greatest reward.

### Postscript

This is a work in progress, and is likely to become out of date in light of technological developments. If you have comments on how to improve this document, please let me know (see footnote 1). You are welcome to circulate it, especially to potential leakers. A separate pdf is available at [www.bmartin.cc/dissent/documents/rr/](http://www.bmartin.cc/dissent/documents/rr/) in the section on leaking.

<sup>15</sup> Brian Martin, "Bucking the system: Andrew Wilkie and the difficult task of the whistleblower," *Overland*, No. 180, Spring 2005, pp. 45–48, [www.bmartin.cc/pubs/05overland.html](http://www.bmartin.cc/pubs/05overland.html).

<sup>14</sup> Paul Ekman, *Telling Lies: Clues to Deceit in the Marketplace, Politics, and Marriage* (New York: Norton, 2009).

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## WBA conference

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WBA's annual conference was held at the Uniting Centre, North Parramatta, Sydney on 22 November 2014. Cynthia Kardell introduced each of the speakers; her remarks are reproduced here. In addition, she was a speaker herself. For the other speakers, you can read Brian Martin's notes on the spoken presentations.

### Current campaigns to improve protections

David Shoebridge



David Shoebridge

#### Cynthia's introduction

David is a Greens member in the NSW Parliament, serving in the State's Upper House since September 2010. He is the Greens NSW spokesperson for forestry, industrial relations, planning and heritage, firearms, justice and local government. David was an elected Greens Councillor on Wollahra Council between 2004 and 2012 where he served a term as Deputy Mayor.

Before entering Parliament, David worked as a lawyer for 13 years, the majority of this time as a barrister. In that time he acted for a broad range of people and organisations with a focus on employment, discrimination, industrial and tort law.

David's here today to talk about his current campaigns to improve the protections for whistleblowers in NSW. Notably, he has been working on some legislation related to the case of Tara McCarthy who was sacked after whistleblowing at the State Emergency Service (SES) and only grudgingly reinstated despite being utterly vindicated by the State's corruption watchdog. I understand the proposed legislation would create a specific power for the reinstatement or reemployment of people who have been dismissed for making public interest disclosures.

#### Brian's notes on David's talk

One of David's primary portfolios, justice, brings him in contact with many whistleblowers, through emails, phone calls and letters. There's so much coming into his office that he and his staff have to prioritise how to respond, sometimes with a letter, sometimes with a referral to a government agency. But in all too many cases, after making a referral to an agency, nothing happens.

One of the cases that came to his office involved Tara McCarthy, of the NSW State Emergency Service (SES). Most of those involved with the SES are volunteers. Running the show are some well-paid staff, an old-fashioned boys' club. Tara, appointed to the staff and looking into financial matters, discovered all sorts of lurks, such as staff receiving free service. She reported the matters to her boss, and ended up losing her job.

The Independent Commission Against Corruption (ICAC) investigated and vindicated Tara. But this took a long time, and meanwhile she sued the state government. She was offered a settlement, with the usual gagging clause. David sees this over and over: whistleblowers are offered settlements with gagging clauses, in which the alternative of continuing their legal cases would probably lead to a lower payout, and a risk of failure.

Tara wanted, most of all, to get her job back. Yet the Public Service Commission said that because of some obscure administrative technicality, Tara could not return to her job.

Following lots of publicity, eventually the government did reinstate her, but under conditions making her tenure precarious.

David has proposed a bill in the NSW Parliament to expressly allow whistleblowers to be able to return to their jobs.

Now for some police-related matters. Between 1998 and about 2002, there were several secret police investigations in the state involving three agencies: the Police Integrity Commission, the Crime Commission and the Professionals Standards Branch of the Police. These agencies took out warrants to carry out covert surveillance on hundreds of individuals. The rationale was to detect corrupt police, but for many of those targeted — which included police, journalists and lawyers — no evidence was provided to justify surveillance. A single affidavit sometimes covered hundreds of individuals. Judges from the Supreme Court approved these warrants without serious scrutiny, excluding only names like Donald Duck.

The result was that one group of police was using surveillance powers to collect information about other police, some of whom were competitors in career terms. Just being subject of a secret warrant could be a black mark against an officer. The result was that those in the top ranks of the NSW Police had either issued secret warrants or been subject to them — a recipe for suspicion and dysfunction.

Then came an investigation into what had gone wrong with the excessive secret warrants. The NSW Crime Commission told investigators that if they asked one more question, the investigators would be criminally charged for breaching privacy provisions. The resulting report was kept secret. Neither major political party would tackle the breaches of the law.

David received considerable material about what had happened. He went to the Ombudsman, because other police oversight agencies were implicated. The Ombudsman said he was not the right person to receive the material.



The state government shut down any parliamentary discussion. But then the government announced that the Ombudsman's powers were being increased to be able to run a secret investigation into the police, with severe penalties for anyone who speaks out about the matters. It seems that whistleblowers, revealing crimes to journalists, are becoming the targets of the Ombudsman's inquiry.

Meanwhile, in parliament, David and others came under ferocious attack for initiating an inquiry into the Ombudsman's investigation. There is no evidence that any of the judges who approved sweeping warrants have been called in for questioning.

What's the solution? David says although there is a need for warrants for secret investigations, there needs to be someone in the court to check the validity of the applications: a public interest monitor.

David gave a story about people who contact him about problems in the police. They go to ICAC and are told to go elsewhere. They go to the Ombudsman and are told they should complain to the police first. So they complain to the police about problems in the police. This leads them to the Police Integrity Commission, which says it lacks the resources to investigate.

David said there is nothing to gain for him politically in taking up the cause of police whistleblowers, because he is regularly at loggerheads with the police over matters such as police dogs used to detect drugs. He supports police whistleblowers because he believes in the cause. There are advantages in a parliamentary inquiry that cannot be attained in other forums.

	Investigative system	Adversary system
Seeks truth	Yes	No
Conceals evidence	No	Yes
In charge of evidence	Judges	Lawyers
Length of civil hearings	About a day	Months, years
Conviction rates	95%	Under 50%
Innocent in prison	Rare	1% - 5%

In the question time after David's talk, a couple of questioners recommended changing Australia's legal system from an adversarial to an inquisitorial system, such as exists in some Euro-

pean countries. David replied that it might be a good idea, but pushing for it is far beyond the resources of his office. He has to focus on achievable outcomes, but would welcome a wider movement in favour of an inquisitorial system.

## Reflections on police whistleblowing

Peter Fox

### Cynthia's introduction

I'm sure Peter doesn't need an introduction. He was a speaker at our conference here last year.

Peter was formerly a detective inspector in the NSW Police. He came to prominence when he blew the whistle on the NSW Police at a public meeting, when he revealed the police had been refusing to investigate the sex abuse allegations that were coming forward about priests in the Catholic Church in the Hunter region.

His allegations are generally accepted as having been the catalyst for two commissions of inquiry set up within days of the public meeting and his subsequent interview on ABC TV program *Lateline*.

The first, the NSW Cunneen inquiry, was limited by its terms of reference to investigating his allegations about police refusing to investigate claims that two priests from the Hunter Region had sexually abused children in their care. It has since reported on its findings, finding that Peter was an unreliable witness and the NSW Police Force is blameless.

The federal commission of inquiry, which is still running is inquiring into the more general question of institutionalised cover-ups of the sexual abuse of children. It has heard damning evidence about many of our most respected public institutions like the Catholic and Anglican churches, Scouts Australia and the YMCA.

Since then the NSW inquiry reported its findings, the Police Integrity Commission (PIC) has inquired into an allegation that the Catholic Church and police had had an operational agreement or MOU that left the question as to how to proceed with claims of sex abuse by priests in the hands of the Church.

Peter is here today to update us on the events this year and what he thinks will come out of the PIC inquiry.



Peter Fox

Photo: Jonathan Carroll

### Brian's notes on Peter's talk

As Peter heard David Shoebridge speaking, he said he could only nod in agreement about the infighting within the higher ranks of NSW Police. He noted that boys' clubs exist everywhere, certainly including the police.

Very early on, Peter realised that the Cunneen Inquiry was not going to be supportive of his position. [See articles in the July 2014 issue of *The Whistle*.] The inquiry focused on attacking Peter and appeared to minimise or ignore police failure. He could have jumped up and down about how unbalanced the inquiry report was, but he knew that wrongdoers regularly did this, so he said nothing — and is very glad he did.

On one occasion after the Cunneen Inquiry, an older woman, who he didn't know, put her hand on his shoulder and said "You've done the right thing. Good on you and don't let the bastards get to you." Peter said this reassured him that many members of the public had understood what was going on.

Peter has just retired after 37 years in the police force. At his retirement function, there were many police, serving and former, and they were quite supportive. Many said to him that they never could have done what he did, namely speak out. He said that most members of the police force are ethical; the problems involve a rela-

tively small number he referred to as an old boys' club or faction.

For Peter, the issues in his case were not about him or his career, but about those who were sexually abused as children. One of these individuals, because of his intellectual disability, expressed his appreciation for Peter not through words but instead by gathering stones, putting them into the shape of a heart, with flowers interspersed around one stone with the words "thank you," and sent a photo to Peter, who was greatly moved.

The volume of the complaints that come to watchdog bodies is so large that it is impossible for them to address them all. An independent agency is a good idea, but unless the resources allocated are huge, they cannot do everything expected of them. In the Ombudsman's office, the response to complaints can depend on which staff member deals with it. Some staff have been in the job too long and lost energy; others have been in the job very long and are too close to the police, which can limit their independence. Meanwhile, the Police Integrity Commission has such limited resources that it has to limit its investigations to only a fraction of matters that are brought to it. In the royal commission, there also have to be decisions about what to focus on, because the volume of material received is so large.

## **Tara McCarthy is back on the job!**

Cynthia Kardell

In preparing for this talk today I drew on information from the reports by *Sydney Morning Herald* journalist Michaela Whitbourn and the media release put out by the Independent Commission Against Corruption (ICAC) on 28 May 2014.

Tara would be telling you her story today, but for the fact that her erstwhile employer made it very clear that she had to have their approval upfront, which I think says the SES management has some way to go before it reconciles its actions with the outcome.

The NSW State Emergency Service (SES) has some 10,000 volunteers and 300 paid staff. In November 2012 Tara

became the first female deputy commissioner in the SES's 60-year history. Tara was employed to review SES contracts and deliver budget savings.

On 28 May this year Tara achieved another first, when ICAC found that SES "Commissioner Murray Kear engaged in corrupt conduct through failing to properly investigate allegations against Deputy Commissioner Steven Pearce, and by dismissing Deputy Commissioner Tara McCarthy from her employment with the (SES) substantially in reprisal for her making allegations against Mr Pearce."

Can I just say I was flabbergasted to hear the news. The Protected Disclosures Act 1994, now the Public Interest Disclosures Act 1994, came into effect on 1 March 1994. In anticipation I had lined up an appointment with ICAC on the same day. I spent hours there, taking them through my well tabulated disclosure.

In the ensuing months I tried to get ICAC to use its act to help me to avoid being sacked. It did nothing of course, but because of my experience I've taken a particular interest in its handling of whistleblower complaints. Frankly I didn't think I'd ever see the day when ICAC would understand the role it had been given under the act to protect whistleblowers.

Mind, it has taken 20 years but it's better late than never.



Tara McCarthy

Tara was employed to review procurement contracts and deliver budget savings so Tara's moves to ensure appropriate governance relating to overtime, use of motor vehicles,

parking and travel caused what ICAC termed "disquiet" in the SES ranks.

She found that her fellow deputy commissioner, Steve Pearce had used his corporate credit card to pay for roof-racks "to carry surfboards" on his SES vehicle and later to pay for electric brakes to be installed "for the towing of his camper trailer."

Tara also found that her boss, Commissioner Kear, had signed off on the two purchases on the basis the money was repaid 15 months and two years respectively after the events.

After she received further credit card statements, she engaged public service auditor IAB to do a "desktop audit," which uncovered potential irregularities totalling more than \$11,000.

Tara also raised concerns about Steve Pearce approving \$60,000 worth of overtime for one colleague, the private use of a company car by another, and entering into two consultancy agreements worth hundreds of thousands of dollars.

The ICAC inquiry heard that Steve Pearce had "provided badging and logos" so the contracts would look like SES documents. The contracts were later terminated.

Michael Fordham SC, counsel assisting ICAC, wryly summed up the allegations saying "The 1902 short story about a cursed talisman that grants wishes, *The Monkey's Paw*, written by W.W. Jacobs, opens with the line: 'Be careful what you wish for, you may receive it'." As he said, Commissioner Kear and the SES needed an efficient, process-driven person to guide the SES and improve its governance and "that is exactly what it got" in Tara McCarthy.



But as Fordham went on to explain “[h]aving got governance and accountability it began to interfere with what seems to have been regarded as an appropriate status quo,” because Tara’s boss had “allowed the importance of ... mateship to permeate the manner in which he administered a significant public entity”... [because her boss and Steve Pearce] “had known each other since at least 2006 and the two men and their families holiday together.”

In its report ICAC found that Commissioner Kear faced the potential for criminal charges, for sacking Tara as a reprisal for investigating her fellow deputy Steve Pearce. It recommended the Director of Public Prosecutions (DPP) consider bringing criminal charges against him under the Public Interest Disclosures Act 1994. That would be a significant first if it gets up.

The evidence before the inquiry was that Tara had saved the SES “significant amounts of money” during her tenure and that despite the fact that there were “never any competence or performance issues” arising out of her employment, she was not given a chance to comment before she was sacked in May 2013. And indeed Fordham SC told the inquiry “[it] is telling that a cab had already been arranged to take Ms McCarthy home.”

It’s wonderful stuff. Fordham SC told the inquiry “Commissioner Kear openly stated that one or both of his deputies had to go. He chose Tara McCarthy.”

Other evidence indicates Commissioner Kear had made false statements to ICAC investigators and failed to “identify, acknowledge or appropriately manage the clear conflict of interest that arose out of his relationship” with deputy commissioner Pearce.

Commissioner Kear subsequently resigned rather than face internal sanctions. I don’t know whether the DPP has decided whether or not to lay charges. I hope he does.

The SES must have ducked for cover, hoping it would all go away, because on 29 August the *Herald* reported “Tara McCarthy is still waiting to get her job back. Still waiting to be reinstated in what Tara described as the ‘job of her dreams’ —

and that the government says it is powerless to do so.”

I’ll just go through some of the rather predictable things that were said and done by the players at the time. It’s a story that we can all relate to.

Public Service Association general secretary Anne Gardiner said “I can’t believe that they can’t just reappoint her, given that ICAC found the original sacking was a corrupt sacking.”

*Well spotted Anne, I’m thinking!*



Anne Gardiner

Emergency Services Minister Stuart Ayres explained he was unable to give Tara back her job because it was a matter for the head of the Justice Department, Andrew Cappie-Wood, and Public Service Commissioner Graeme Head.

Tara had been negotiating with the SES executive “for three months and it felt as if she was on a merry-go-round, going nowhere ... with no decisions made and no offer of reinstatement.” “Her sacking was devastating enough, but now the failure of the government to provide her with the protections they promise to whistleblowers was ‘soul-destroying’.”

*Now steady up Tara, I muttered. It’s only been twenty years.*

Tara even told them she would consider a permanent position of equivalent rank and responsibility. But their only offer was for a temporary and more junior role at another organisation.

*Stick that up your jumper!*

SES executive Mr Cappie-Wood explained while it was his “firm view” that Ms McCarthy’s “well-being and safety” would be at risk if she returned to the SES he and Mr Head from the Justice Department remained in “active discussions” with Ms McCarthy about her future.

And finally Public Service Commissioner Graham Head was finalising advice for the government’s consideration “on mechanisms that would enable reinstatement,” including where a person was sacked as a reprisal for whistleblowing.

Ms Gardiner from the PSA cut to the chase. She thought the Minister should intervene and exercise his power to appoint Ms McCarthy as commissioner or acting commissioner of the SES.

Greens MP David Shoebridge said it wasn’t good enough: unless Ms McCarthy was reinstated “after being entirely vindicated by an ICAC hearing ... it [will] show the state’s whistleblower protection laws are worthless.” “There needs to be a change in focus in the state’s laws, that makes reinstatement the primary remedy for any whistleblower whose claims are validated in either ICAC or civil proceedings.”

This is probably just a taste of what went on for five months!

Of course the alleged wrongdoer, deputy commissioner Pearce, remained on leave with full pay.

Then on 24 October 2014 the *Sydney Morning Herald* reported Tara will return to her former position next week, albeit only on a six-month contract. And “Mr Pearce, who was also deputy commissioner, will return from leave on full pay on the same day.”

Tara revealed it had been “a long, difficult process but I’m absolutely thrilled to be returning and getting back to work” and that “it was a privilege to be the first female deputy commissioner and I’m very excited about being able to take up that role again.”

Public Service Association general secretary Anne Gardiner welcomed the decision although she’d “expected Tara would have been reinstated earlier.”

Emergency Services Minister Stuart Ayres, who it appears may have been



pushed to intervene, defended his part saying he was always unable to give Ms McCarthy her job back because it was always a matter for his department heads, Mr Cappie-Wood and Mr Head.

Mr Cappie-Wood explained that although he was concerned that Ms McCarthy's "wellbeing and safety" would be at risk if she returned to the SES, he and Mr Head had made the decision to offer Ms McCarthy a six-month contract, because "senior executive roles in NSW government agencies can only be offered on a temporary basis for a maximum of six months without external advertising and merit selection processes."

*This was a real "Tony Abbott" moment. You know, when you're listening to him explain something and you feel like you're in a parallel universe?*

And Tara McCarthy and fellow deputy commissioner Steve Pearce will both have to compete for the role of deputy commissioner in about February when the organisation is restructured so that there is only one deputy commissioner position.

*A re-structure, I fumed! How predictable is that?*

Asked why Mr Pearce was returning to his position, Mr Cappie Wood explained "The ICAC and the Public Service Commissioner have carried out thorough and fair investigations into these allegations and no findings of corrupt conduct were made against Mr Pearce."

*That's all good, then.*

The acting SES commissioner, Jim Smith, told staff on Friday before Ms McCarthy's return. And just in case you're thinking that things were on the up and up: a spokesman for the SES told the *Herald* "Tara McCarthy is certainly going to be a valued member of the staff here at the SES upon her return, just as much as Steve Pearce is."

*More like sticking the boot in, I thought?*

I made contact with Tara mid September before she went back to work on 27 October. I was not surprised to hear she spent the first week back taking part in a formal week-long process to allow her to be reintroduced back into the SES.

Tara's boss Jim Smith offered her counselling in case she was worried or

fearful about returning to work — perhaps fearful her colleagues might want to pay her back. Tara didn't need it: she said something like ICAC had done its job and now it was time to get on with work. Her boss was non-plussed as far as I can work out and after about half an hour of trying to spark an argument gave her the rest of the day off.

Day two Tara met a clearly nervous Steven Pearce, who I understand ICAC had decided was clearly incompetent, but not necessarily corrupt. Tara was cordial, businesslike and got the feeling Pearce had been expecting a punishing rant. They must have put a day aside just in case they needed to mediate between the two. I can only assume they were hoping Tara would lose her temper and they'd have to "reluctantly" let her go, saying they couldn't guarantee her safety or some such nonsense. Tara was reasonable-ness itself and got the rest of the day off instead.

Over the rest of the week Tara got to meet her staff, who were welcoming, even admiring, so much so that her boss had what seems like a change of tune, telling her that her return had given them (the SES) a chance to get things on a proper footing.

Tara returned to full time work the following week and as far as I'm aware is still thrilled to be back.

Since then the SES has decided to bring forward the recruitment of a replacement deputy commissioner, perhaps so as to allow the incoming commissioner to take part. This all seems so ordinary, but you have to remember that Tara didn't get her old job back. She got a contract for six months. Tara should have got her old job back. ICAC found the decision to sack her was corrupt, which means the decision is void *ab initio* at law and in effect, never happened. So is this just another way of the SES boys giving the finger to ICAC, of letting everyone know that you can't embarrass them and expect to get away with it?

I like to think that the incoming Commissioner will see in Tara the one person he or she can rely on, because she has certainly showed her ability to act without fear or favour in putting the SES first. I take my hat off to Tara and I look forward to her heading up

the SES one day in the not too distant future.

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## Commonwealth Bank cover-up and comeuppance

Jeff Morris

### Cynthia's introduction

Jeff has a degree in economics and law. He is a Certified Financial Planner. He has had nearly 30 years experience working in financial Service including as a taxation manager at NatWest Bank and Deloitte and Touche Chartered Accountants, a financial consultant with the actuarial firm Towers Perrin and a Vice President of investment bank Bankers Trust Australia.

In 2008 he joined Commonwealth Bank Financial Planning and rapidly became concerned about the severe losses and emotional distress being suffered by many elderly and vulnerable clients due to the poor advice they received. He became a whistleblower to the corporate regulator ASIC — Australian Securities and Investment Commission — in relation to financial planner Don Nguyen and Commonwealth Financial Planning.

Jeff will tell about how Don Nguyen was subsequently banned from practising as a financial planner for 7 years and seven other "rogue" planners were also banned. Commonwealth Financial Planning had a two-year enforceable undertaking imposed on it, had to spend \$25 million to bring its business up to scratch and to date has paid out over \$50 million in compensation to the victims of its poor advice.

If you're an ABC TV *Four Corners* fan you will have seen Jeff Morris and some of the victims of Commonwealth Bank Financial Planning in the documentary entitled "Banking Bad" by Adele Ferguson and Deb Masters that aired on the ABC on 5 May 2014.

In June 2013 Jeff Morris blew the whistle again, this time apparently on the bungling incompetence of ASIC. It was a catalyst for a Senate inquiry into ASIC that delivered its findings in May this year. Jeff will no doubt explain why he thought their findings would make a difference to the way ordinary Australians are provided with

financial advice. For the full unadulterated story about blowing the whistle on our biggest bank and why some red tape may be essential, please welcome Jeff Morris.



Jeff Morris

#### Brian's notes on Jeff's talk

Jeff's whistleblowing saga started after he talked to two elderly people in his office one day. They were physically breaking down from the stress of losing \$500,000 they had saved for their retirement. They didn't understand what had happened, even though financial planners are supposed to explain things.

The main problem with most financial planning is too much gearing. This occurs because planners are given bonuses based on how much money they shift.

Jeff wrote a professional report about what had happened to the clients, pointing to the inappropriate behaviour of another financial planner, Don Nguyen. He learned that there were hundreds of victims. However, senior management didn't act.

Jeff identified several moments in his whistleblowing trajectory when things shifted for him. The first moment was when he realised no one else was going to do anything, and that he was the one who would have to do it.

He wrote a five-page report to ASIC, providing a detailed plan, but with no expectation of action. Friends said ASIC was incompetent. By this time Don Nguyen had been suspended. But no other planner would take on the

job and cover up what had happened, so Nguyen was brought back to clean up the act.

Jeff and two colleagues — called the ferrets — went to a trade journal, hoping the resulting story would force ASIC to act — but ASIC didn't. Up to then the ferrets had remained anonymous, while the bank management tried to discover who had done the leaking. The ferrets wanted to stay employed so they could continue gathering information to provide to ASIC.

Bank management called for employees to come forward with any evidence of fraud. Jeff did.

The publicity led management to let Nguyen go, though giving him the opportunity to resign and claim an income benefit of \$70,000 per year from the CBA Group.

Finally, Jeff and his group physically went to ASIC on 24 February 2010 and put documents on the table. ASIC gave the bank a couple of weeks to provide files; it provided just 78. Later an additional 139 files were provided. It took until nearly the end of the year for the bank to prepare a half-hearted compensation scheme.

The bank originally paid one woman \$5000, then upped it to \$30,000. She eventually received \$600,000. Some clients were told they weren't entitled to anything.

It was very stressful for the ferrets. One of them resigned because of this and shortly after died in his sleep, aged 35. Then another ferret couldn't take it any longer and resigned. This left Jeff alone on the job.

Jeff contacted various politicians, most of whom were pretty good. Several wrote letters to ASIC, leading nowhere. Jeff made the crucial step of contacting journalist Adele Ferguson. She was wowed by the information he provided, and ran a series of stories over two weeks. As the series proceeded, John Williams got up in Senate and called for an inquiry. The series of articles was powerful because the bank didn't have time to prepare responses and media strategies and do lobbying to minimise the impact of the revelations. After the Senate inquiry was initiated, the bank set up a team of four or five people in Canberra for lobbying.

Blowing the whistle is not enough, because the regulator receiving your disclosures is part of the problem. That was the case with ASIC. The Senate inquiry attracted a huge number of submissions about financial misconduct. Despite the overwhelming amount of evidence, no one at ASIC has lost their job. The bank lost all its credibility with the Senate. The inquiry recommended a royal commission into the banking industry.

Jeff's next turning moment was the experience of vindication, when the bank was forced to provide a proper compensation scheme.

The current stage involves continuing the struggle in the face of the new compensation scheme, administered by the same bank unit. The true cost of a proper scheme would be about a billion dollars.

ASIC has set up a whistleblowing unit, but it's not useful as long as the incompetent ASIC commissioners and staff — and the ones who tried to mislead the Senate — remain in place.

The entire financial services sector needs to be reformed. There is still more to come concerning the Commonwealth Bank, and other banks too. Public concerns have broadened, for example now including the qualifications of financial planners and their training.

Jeff has been in the industry for decades, and learned about all the shady operations going on. He refused to join any of the scams. His one regret is that he didn't try to do anything earlier.

Jeff says you can't get anything done on your own. His best allies have been the media and parliament. Adele Ferguson's stories and the Senate inquiry were needed to tackle the bank. A whistleblower can't do it alone.

Incidentally, the *Four Corners* story "Banking Bad" of 5 May 2014 won Adele Ferguson and others the Gold Walkley Award. In December, Jeff was at the awards along with Senator John Williams and Senator Sam Dastyari, who is chairing an ongoing Senate inquiry into banks and financial planning. As part of the fallout from the Commonwealth Bank scandal, the government is implementing a "National Adviser Register" for the financial planning industry.

## Catholic priests behaving unforgivably

Joanne McCarthy

### Cynthia's introduction

Joanne started work as a nurse, but fortunately for the nation switched to journalism. She has been with the *Newcastle Herald* since 2002.

Over the years, Joanne's tenacity in pursuing justice for the victims of sexual abuse has effectively wedged her between two powerful and patriarchal institutions: the Catholic Church and the police force. But Joanne was not fazed by their opposition and in fact I understand it may even have energised her.

Eventually the federal Gillard government set up the Royal Commission into Institutional Responses to Child Sexual Abuse after former detective inspector Peter Fox made very public allegations about police cover-ups. His allegations also prompted the more limited NSW Commission of Inquiry, set up by the NSW O'Farrell government. Both inquiries were needed, but I suspect the federal inquiry, which is still running, will have a most profound effect on policing, the justice system, our schools, charitable organisations like the YMCA and our private life.

In 2013 Joanne received Australian journalism's most prestigious award, the Gold Walkley, for her coverage of child sexual abuse in the Catholic Church. Her story was the subject of the ABC program *Australian Story* on Monday August 25. Former Prime Minister Julia Gillard was apparently so impressed with her work that one of her last acts in office was to send a personal note to McCarthy.

### Brian's notes on Joanne's talk

Joanne has spoken at other sorts of events, such as groups of Christians. In comparison, she finds the greatest empathy here at the Whistleblowers Australia conference.

She worked for the *Central Coast Express*, a Murdoch newspaper, for 20 years until she couldn't handle it any longer. Now she works for Fairfax, but is prepared to criticise the media. The media, along with the church and the police, are key institutions that need to be accountable.



Joanne McCarthy

Joanne was raised as a good Catholic, which some people find surprising. She had great nuns as teachers, strong independent women, and got much out of the experience. She wasn't brought up to be concerned about problems in the church.

The NSW Police Royal Commission, 1995–1997, provided the first inkling that there were problems with child sexual abuse in the church. If there were problems, they were assumed to involve isolated cases — nothing systematic.

She began with the *Newcastle Herald* in 2002, and wasn't aware of previous cases of abuse. Then in 2006 she received a call about John Denham who was previously convicted of child sexual offences, asking why nothing had been reported about him — he was working near children. She became interested, and made some calls. When she first contacted court authorities, initially she was told there was no record of Denham's conviction, and eventually was told that the file was not in the expected place.

Joanne wrote some stories, after having talked with Denham. In her experience, paedophiles fit a stereotype, and it is possible to appeal to their vanity so they let down their guard and speak more freely. Initially Denham denied having been convicted, and only acknowledged this after she quoted details. (Denham is in gaol; his victims number more than 60.)

Abuse in the church is of special interest because the churches are invested with moral authority. If it had just been Denham, that would have been bad enough. Joanne was writing about these matters, and asked herself how the church authorities had allowed him to continue. After her stories were published, victims contacted her and she gradually gathered more material and came to understand that the problem was systemic.

In trying to report on child sexual abuse, Joanne discovered both acts of commission (such as abuse and seeking career advancement) and acts of omission (not taking action against abuse and offering excuses for inaction) — and in many ways the acts of omission are worse. Lots of lawyers act in the excuse mode.

She dreads hearing the phrase “But the church does good work.” It's a pat way of pardoning abuses. Meanwhile, church leaders criticise “moral relativism,” at the same time as they try to deny abuses, saying black is white.

In 2012, while sitting in bed unable to sleep, she wrote a call-to-arms article about loss of faith in institutions — church, government, media and others — saying there needs to be a royal commission into child sexual abuse, because the problem was vastly larger than anyone realised.

The number of supportive politicians throughout the campaign can be counted on the fingers of one hand. They include David Shoebridge. Julia Gillard supported the campaign only at the end.

Joanne has never worked with Kate McClymont (an experienced journalist who has exposed corruption in numerous articles), but shares a lot with her: they have encountered boys' clubs and corrupt institutions.

She has had men in their late 70s coming to tell her about being sexually abused as children. Her stories have enabled them to open up for the first time in their lives. This shows the importance of speaking out, and media coverage, in enabling others to acknowledge what happened, eventually leading to a tipping point in which the stories really start to flow.

Every single day since 2010 she has received emails, phone calls or letters from individuals who suffered sexual abuse as a child. The stories of these



individuals are part of what makes it possible for her to continue. Would she do it all again? Definitely.

## On turning whistleblowing and journalism into criminal activities

Simon Frew

### Cynthia's introduction

Simon is a long time activist and musician and currently the deputy president of the Pirate Party. He joined the party as a founding member in 2008 to fight the Labor Government's Internet censorship proposals, and has always had a strong desire to protect civil liberties, and reform copyright and patents legislation.

He was co-secretary in 2009–10, deputy president 2010–13, president 2013–14 and then back to deputy president, working with a strong team to register the party in January 2013. He has been a strong advocate for information freedom and government transparency, making many freedom-of-information requests and engaging with the community on trade agreements and treaties.

In June Simon explained online how, for him, Pirate Party Australia is about protecting and extending the principles of a free and just society: liberty, equality and democracy. We do this pragmatically, he wrote, with thorough research and debate. So, it comes as no surprise that the PP's stated platform is based around the core tenets of freedom of information and culture, civil and digital liberties, privacy and anonymity, government transparency and participatory democracy.

The federal parliament recently passed the *National Security Legislation Amendment Bill (No. 1) 2014* that makes major amendments to the *ASIO Act*, giving ASIO — Australian Security Intelligence Organisation — the ability to access, modify, copy and delete information on computers. It also introduces tough new sentences for journalists and whistleblowers who report or disclose sensitive information, perhaps about an ASIO intelli-

gence operation, even if it is in the public interest.

The third tranche of proposed amendments to the ASIO act, which is often referred to as the “foreign fighter’s bill” and requires ISPs to retain their metadata for two years, is still in the Senate. The Pirate Party opposes the entire legislative package.

Simon is here today to talk to us about why the criminalisation of intelligence whistleblowing and journalism and the government of the day having access to metadata may be a dangerous thing for us.

### Brian's notes on Simon's talk

The Pirate Party originated in Sweden, when the government tried to shut down Pirate Bay, a file-sharing website. This triggered the formation of a political party there, and later one in Australia.



The party supports greater transparency in the affairs of governments and corporations, to expose crimes and abuse. Corruption thrives in secrecy, hence the value in transparency.

When attempts were made to shut down the WikiLeaks website, the Pirate Party in Australia set up a mirror site and said to the Australian government, “Are you going to shut down a political party’s website?” Before long, there were dozens of WikiLeaks mirror sites around the world.

Two sets of leaks have been especially important for the Pirate Party. The first was the leaks provided by Chelsea Manning, including the collateral murder video, Afghan and Iraq war logs, and diplomatic cables. The second were the leaks from the US National Security Agency by Edward Snowden, revealing the extent of government surveillance of electronic communication worldwide. Snowden's

leaks revealed the cooperative arrangement between the spy agencies in the US, UK, Canada, Australia and New Zealand.

Metadata is not defined in Australian law. It includes things like email titles, location data for mobile phones, and email address books. This sort of information can, under new laws, be accessed without a warrant. A warrant can be obtained for entire computer networks, for example for a university or perhaps even for the whole Internet. The warrants are issued in secret so there is no way to know for sure. The law enables ASIO to change the contents of people's computers without their knowledge. Most concerning is the specification of what are called special intelligence operations. Saying anything about them can lead to ten years in prison for whistleblowers and journalists — and the list of special intelligence operations is itself secret.

The second round of new intelligence laws applies to people who visit certain parts of the world, and the burden of proof is put on individuals to prove their innocence. The third round of laws, involving data retention, is still under consideration; it requires Internet service providers to save metadata for two years. Changes in the definition of metadata can be changed without going to parliament.

The retention of metadata opens the door to all sorts of abuses. It would allow searches through a person's metadata to obtain information to use against them in court cases or simply to embarrass them.

A questioner asked whether Skype is secure. Simon said Skype has better security than many channels. Companies usually want to make their systems secure, whereas spy agencies want to build in trapdoors so they can collect data.

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# WBA AGM

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## Whistleblowers Australia Annual General Meeting

23 November 2014

North Parramatta, Sydney NSW

1. Meeting opened at 9.15am

Meeting opened by Cynthia Kardell,  
President

Minutes taken by Jeannie Berger

2. Attendees: Cynthia Kardell, Feliks Perera, Robina Cosser, Geoff Turner, Stacey Higgins, John Murray, Greg McMahon, Jeannie Berger, Karl Pelechowski, Ken Smith, Yve De Brit, Brian Martin, Michael Cole, David Rowe, Gail Mensinga, Bob Steele, Virginia Heaps, Ross Sullivan, Clare Kearney, Robert Tierney, David Reid.

3. Apologies: Margaret Banas, Katrina McLean, Margaret Love, Toni Hoffman, Lisa Hamilton, Lesley Killen, Jack McGlone, Rosemary Greaves, Graham Schorer, Allan Smith, Ray Hoser, Jane Longhurst, John White.

4. Previous Minutes, AGM 2013

Cynthia Kardell referred to copies of the draft minutes, published in the January 2014 edition of *The Whistle*.

Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2013 AGM.

Proposed: Feliks Perera

Seconded: Robina Cosser

Passed

4(1). Business arising (nil)

5. Election of office bearers

5(1) Position of president

Cynthia Kardell, nominee for position of national president, stood down for Brian Martin to act as chair. Because there were no other nominees, Cynthia was declared elected.

5(2) Other office bearer positions (Cynthia resumed the chair.)

The following, being the only nominees, were declared elected.

Vice President: Brian Martin

Junior Vice President: Robina Cosser

Treasurer: Feliks Perera

Secretary: Jeannie Berger

National Director: Greg McMahon

5(3) Ordinary committee members (6 positions)

Because there were no other nominees, the following were declared elected.

Geoff Turner

Toni Hoffman

Katrina McLean

Margaret Love

Lisa Hamilton

Stacey Higgins

6. Public Officer

Margaret Banas has agreed to remain the public officer. Cynthia asked the meeting to acknowledge and thank Margaret Banas for her continuing support and good work.

6(2) Cynthia Kardell invited a motion that the AGM nominates and authorises Margaret Banas, the public officer to complete and sign the required submission of Form 12A to the Department of Fair Trading on behalf of the organisation, together with the lodgement fee, as provided by the Treasurer.

Proposed: Stacey Higgins

Seconded: Michael Cole

Passed

7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2014. A motion was put forward to accept the financial statement.

Moved: Robina Cosser

Seconded: Geoff Turner

Passed

### ***Feliks' report***

Once again, it is my pleasure to present to you the accounts for the financial year ending to 30 June 2014. This year, your association recorded an excess of expenditure over income of \$2141.71 in comparison to the previous year, our income sources were reduced. Membership subscriptions were down from \$3,050 to \$2,600, and donations fell from \$1,621 to \$1,090. Due to low bank rates, our fixed

deposit earnings were also down from \$1,199 to \$794.



Cash escaping from  
WBA's bank account

The major expenditure for this year was the subsidy for the 2013 conference. The 2013 conference was a resounding success, and this subsidy was well spent to benefit the membership. I trust that in the future years, we will be able to continue to subsidise the Annual Conference.

At the end of the financial year, your Association had no outstanding debts and no major debtors or creditors. Once again, I want to remind the membership how important it is to increase our membership numbers. I trust all of you will make a special effort to recruit at least one more member in the coming financial year.

I also want to express my sincere thanks to the membership for their trust, and their constant support of the work undertaken by the association. Once again, it is my pleasure to present to you the accounts for the financial year ended to 30 June 2014.

### ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2014

#### INCOME

SUBSCRIPTIONS, \$2,600.00

DONATIONS, \$1,090.00

INTEREST ON FIXED DEPOSIT, \$794.62

TOTAL INCOME, \$4,484.62

#### EXPENDITURE

WHISTLE PRODUCTION COSTS, \$1,845.34

WEBSITE FEES, \$150.00

RETURN TO BRANCH, NSW \$250.00  
 B MARTIN BOOKS, \$646.65  
 ANNUAL RETURN FEES, \$52.00  
 SUBSIDY 2013 CONFERENCE, \$3,667.84  
 PAYPAL FEES, \$9.90  
 TOTAL, \$4,994.22  
 BANK CHARGES, \$4.60  
 TOTAL EXPENSES, \$6,626.33

EXCESS OF INCOME OVER EXPENDITURE  
 FOR THE YEAR, \$2,141.71  
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## BALANCE SHEET, 30 JUNE 2014

ACCUMULATED FUND BROUGHT FORWARD  
 FROM 2013, \$25,804.72  
 LESS EXCESS OF EXPENDITURE  
 OVER INCOME, -(\$2141.71)  
 PLUS SUNDRY CREDITORS  
 DEPOSITS FOR 2014  
 CONFERENCE \$165.00  
 TOTAL, \$23,828.01

## ASSETS

FIXED DEPOSIT INVESTMENT \$13,000.00  
 BALANCE AT NATIONAL BANK, \$9,862.91  
 BALANCE IN PAY PAL ACCOUNT  
 \$365.10  
 DEPOSIT 2014 CONFERENCE, \$600.00  
 TOTAL, \$23,828.01

## 8. Other Reports

### 8.1 Cynthia Kardell, President

This year has been ordinary in the sense that I've done about half a dozen interviews on issues around Ed Snowden's agenda, the Australian government's new security laws, ICAC's inquiry into Margaret Cunneen SC and the criminal prosecution of Freya Newman.

I've taken on average two to three calls a week. Only half of those are from the public sector. Many are from people planning to blow the whistle, which is good because sometimes you can persuade the "wannabe" whistleblower to be more patient, to dig more deeply, to protect themselves better and, sometimes, not to take it any further at all.

Freya Newman's story is a case in point. She faces a possible gaol sentence for accessing restricted information using a colleague's login to obtain information about Frances Abbott's secret scholarship in 2011 when her father Tony Abbott was the opposition leader. Press reports indicate Frances paid only \$7546 for her \$68,182 degree at exclusive private

fashion college the Whitehouse Institute of Design. Freya alleged Frances got favourable treatment because she was Abbott's daughter, which is plausible. The fact that the elite institute's chairman, Les Taylor, is apparently a long time friend of Mr Abbott and a Liberal Party donor makes it all the more appealing, but inference alone was never going to be enough to force an investigation into the Institute's decision. But as it turns out it was enough to trigger a criminal prosecution, which decision gives more weight to Freya's suspicions than anything else.

But this year was no ordinary year in the sense that Jean Lennane, our founder and friend died on 18 September in Canberra after a short illness. Jean hasn't been active in WBA since about 2006, but her legacy is profound. For me it's Jean's abiding sense that WBA should always be inclusive, never exclusive in gathering support for our ideas, which has shaped my attitudes and I think who we are. She understood, just as Ed Snowden does now, that whistleblowers need their supporters, because it's our supporters, along with journalists and activists, who actually hold the powerful to account. Twenty-one years on, WBA is a more stable and productive organization, because of her insight and leadership.

Finally, I'd like to thank our committee, particularly Brian Martin, Robina Cosser, Feliks Perera and Jeannie Berger who also take inquiries, because they (with me) are the public face of WBA. Then, there are thanks due to Geoff Turner and Stacey Higgins, for our internet presence. More widely, this conference and meeting today would not have been possible without their help or that of committee members Margaret Love and Lisa Hamilton and member Jane Longhurst who stepped into the breach to help me when I asked for help earlier this year.

### 8.2 Jeannie Berger, Secretary

Memberships are steady. This year we have remained stable. Whilst we may lose members we gain approximately the same. We lost 13 members this year, but gained 14 new members. We currently have 137 members.

Inquiries are steady too, with more of our committee taking more calls. Once again as every year, I encourage all members who assist people to urge them to join.

**8.3 Geoff Turner, Communications**  
 Geoff continues to maintain and update the WBA website. Geoff and Cynthia share the incoming inquiries.

**8.4 Brian Martin, Whistle editor and international matters**  
*The Whistle* is running smoothly. Brian encouraged members to submit stories for publication.

On international matters, Brian mentioned groups including Whistleblowers UK and Whistleblower Network Germany.



Guido Strack of  
 Whistleblower Network Germany

**8.5 Robina Cosser, Schools contact**  
 Robina discussed her website <http://www.theteachersareblowingtheirwhistles.com/>. (Also "Whistleblowing women").

498,000 pages of my websites have now been read. Every six days an average of 63 people spend more than one hour looking at my websites (this includes time they spend following links to newspaper articles, etc.).

Several teachers' stories are being monitored at the moment.

- Werribee in Victoria  
 A Werribee teacher was given too many difficult classes. The department



was found negligent and the teacher was awarded \$1.3 million.

This is an important case because it sets a precedent — now departments are aware that they can be held liable if they neglect the welfare of classroom teachers.

This case also illustrates the difficulties caused by the transfer system. A principal may be capable of making a really good carrot cake but the department sends him parsnips. The parsnips may be perfectly good parsnips but they don't work well in a carrot cake. So the only way for the principal to deal with the situation is to attack the parsnips, smash them to smithereens, and then hope that the department will replace the smashed parsnips with carrots.



Don't use these in a carrot cake

#### QUEENSLAND CASES

##### • Runaway Bay Sports Centre

The former Queensland Director-General of Education is in court, accused of nepotism. It is alleged that she organised jobs at the Runaway Sports Centre for her son and a close family friend. She faces jail if found guilty.

This case is interesting because the whistleblower was (apparently) a member of the staff of the college — so a person at the bottom of the food chain has managed to blow the whistle effectively on a Queensland Director General. This is really unusual and may indicate that the Queensland Crime and Misconduct Commission (now called the Crime and Corruption Commission) is working effectively at last.

##### • Djarragun

After one year in jail the principal pleaded guilty to making false claims for three million dollars in funding for the school. There were two whistle-

blowers — a teacher and a member of the admin staff.

##### • Indooroopilly

I have been following this case for several years now. The whistleblower was the Workplace Health and Safety Officer at the school. He reported workplace bullying and asbestos problems at the school.

This case illustrates how risky it is to become a WHS officer — you have a responsibility to report WHS issues but your reports may be ignored. And then you become ill with the stress of trying to get the problems fixed.

##### • Burpengary/Whitfield

A teacher asked WorkCover to investigate workplace bullying allegations at Whitfield. WorkCover refused to investigate.

You may conclude that WorkCover failed the teachers at Whitfield State School.

The teacher managed to get a transfer to Burpengary — a school with a long history of substantiated smashed parsnips.

Six months later he suicided.

The coroner's inquest was well run but limited.

I was particularly concerned with the many hours of evidence from a psychologist who had never met the teacher and who based her evidence on the reports written by the parsnip-smashing principal.

I was also concerned about the way that medication is being used to deal with systemic problems, and about the side effects of that medication.

##### • Kuranda

An outstanding teacher seems to have been driven into ill health and out of work. The community are protesting. The department is not responding.

##### • Media

A reporter from a national newspaper contacted me while I was in Spain and I was able to put him in contact with twelve members of my website who were willing to be interviewed. The article was published in July.

I contacted a TV station about the Kuranda teacher and they had a reporter and film crew in Kuranda the next day. The story was on the local news that evening.

A national newspaper is also interested in this story.

A TV news program is currently working on a story about violence in the classroom. Four members of my website have volunteered to be interviewed.

##### • Donation

One person whose story I have told has donated \$500 to Whistleblowers Australia.

I was really thrilled by this, not because of the money but because it means that the person felt that having their story told on my website was a positive experience.

#### 8.6 Stacey Higgins, WBA Facebook page administrator

Stacey discussed the activity on our page and the increase in followers. We have approximately 200 friends. 560 people looked at our page in 28 days. Stacey urged members for more feedback on the page. Stacey also encourages the committee and all members to send any material that she can put up on our page.

#### 8.7 Greg McMahon, National Director

Greg discussed matters occurring in Queensland. A key event during the year was the appointment as Chief Justice of Chief Magistrate Carmody, who had been implicated in the Heiner affair. In addition, former state premier Wayne Goss, who had been the subject of the disclosures by Kevin Lindeberg and Col Dillon, died and thus escaped further scrutiny. Greg also discussed supporting a Royal Commission into abuse in the military and a further inquiry into the 2011 Brisbane flood.

Developments: Royal Commission into Child Abuse, union corruption and continuing campaign of disclosures about the Griffith University research into whistleblowing.

#### 8.8. Agenda items and motions (previously notified) None put forward.

9(1) 2015 AGM: Sydney

10. AGM closed 12:50pm

### Hundreds of Japanese protest “unclear” whistleblower law

RT News, 10 December 2014



Placard with an image of Japan's Prime Minister Shinzo Abe at the rally against the state-secrets law, Tokyo, 9 December 2014 (Reuters/Yuya Shino )

DEMONSTRATORS flooded Tokyo's streets over a just-activated secrecy law set to threaten the disclosure of government wrongdoings, as well as limit press freedom. The government hopes the added safeguards will lead to intelligence-sharing with the US.

Starting Wednesday, anyone leaking state secrets can get 10 years in prison. Anyone who becomes an accessory to the crime — such as a journalist — can get five. According to the Kyodo news agency, a total of 460,000 documents are to immediately gain classification under the law.

This fact led to hundreds of people with banners and tambourines filling the capital's streets very early Wednesday, prior to the year-old law coming into effect — the exact same picture seen in November 2013, when they tried to prevent the document from being ratified.

“This terrible law must be revoked, but at least if we keep on protesting the government won't be able to do whatever it wants,” Yumi Nakagomi, 59, told Reuters. “If we give up on this Japan will end up just like Russia or China, or North Korea.”

“This law will restrict the people's right to know,” Tomoki Hiyama, one of approximately 800 people gathered in front of the parliament said late Tuesday. “It's full of ambiguity and will take us back to the ‘public peace and order’ controls of World War II.” Yukiko Miki with NGO Clearinghouse Japan explained to Reuters that the law

will be enforced irrespective of circumstances under which the transgression happened. And although there are concerns that the people's right to know will be affected, Deputy Chief Cabinet Secretary Hiroshige Seko moved to dissipate them.

“By applying the law practically and properly, explaining carefully how it is being applied, and reporting to parliament and making public how it is being enforced, the government plans to show clearly that the people's right to know will not be infringed on.”

But the public maintains that Prime Minister Shinzo Abe's government fails to explain fully the ins and outs of how the law actually functions. The people don't know what is deemed a secret and what isn't, let alone what precautions they must take to avoid being charged, for example erasing online posts or other measures.

“It seems to allow Abe to do virtually anything by saying ‘it's for the good of the country’ without anybody knowing what they are actually doing,” Hisako Ueno, 60, told journalists.

Similar concerns were raised by the Japan Newspaper Publishers and Editors Association in a letter to Justice Minister Yoko Kamei.

“It cannot be said that all our concerns have been alleviated,” it read.



Placard at the 9 December rally

Disappointment with Abe's handling of the situation is not new. A year ago in November, more than 10,000 took to the capital's streets to kill the bill before it ever had a chance. They say their concerns remain largely unaddressed.

“The definition of what will be designated as secret is not clear, and bureaucrats will make secrets extremely arbitrarily,” TV journalist Soichiro Tahara told *Japan Daily Press* in 2013.

### New info-sharing tool set to beat Japan's anti-whistleblower law

RT News, 19 December 2014

A JAPANESE activist and academic has created a website to facilitate the secure leaking of sensitive information to media by civil servants, challenging Japan's controversial new state secrets law.

The website, set up by Surugadai University economics professor Masayuki Hatta, enables government workers to share documents with the media. The tool allows journalists to retrieve transferred information using a secure digital access key, operated by Tor, a popular free anonymity enabling software, Hatta says.

The site, unveiled Friday, uses an open source platform developed by Europe-based Hermes Center for Transparency and Digital Human Rights.

“I want to create a secure channel that people can use to transfer information without putting themselves in jeopardy,” the professor was quoted as saying by Reuters.

“I'm not entirely against the protection of sensitive information, but I also believe the new law has many problems.”

After a year of protests, the contested state secrets law went into effect last week. Under the new regulation, whistleblowers could face up to 10 years in jail, while journalists and others who encourage secrets leaks could be imprisoned for up to five years. However, Hatta does not think that merely providing a tool for whistleblowing is punishable under the law.

The law has come under fire from critics who worry it will muzzle journalism and see it as part of a larger crackdown on dissent. Critics fear that officials may use the law's vague language to conceal information from the public.

Reporters Without Borders has decried the law as “an unprecedented threat to freedom of information.”



Prime Minister Shinzo Abe defended the law, citing a growing need to safely share intelligence with the US in light of the encroaching regional threat from China's military buildup and uncertainty surrounding North Korea's nuclear program.

Abe has said that the law will only apply to leaks threatening national security and will not jeopardize media freedom.

"If the law prevents films from being made, or weakens freedom of the press, I'll resign," Abe said.

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## Whistleblower rewards make sense

Ruth Williams

*The Age*, 19 November 2014, p. 50

SOMEONE somewhere in the world is currently enjoying the considerable spoils of being a corporate whistleblower for the United States of America.

Last month, the US Securities and Exchange Commission paid out its biggest reward to date to a whistleblower — a person, living abroad, who helped it uncover a particularly hard-to-detect fraud. The payout? \$US30 million.

It was just the latest such "bounty" paid by a US regulator. Hundreds of people in the US and overseas have been awarded big money after helping US government agencies detect wrongdoing — most famously through the Lincoln-era False Claims Act, which tackles fraud against the state.

Depending on the agency involved and the type of crime uncovered, whistleblowers receive up to 30 per cent of money recouped for US taxpayers, through penalties and legal settlements. It is the sort of treatment that corporate whistleblowers in Australia can only dream about. In notable Australian cases, whistleblowing has been greeted with hostility

and even dismissal — not to mention complete inaction from the regulator.

And there's no compensatory nest egg at the end of the ordeal.

For evidence, look no further than the testimony given by the Secrecy whistleblower in 2012 [Brian Hood: see *The Whistle*, January 2014]. He was victimised and forced from his job, his warnings ignored. Or the story of Jeff Morris, who blew the whistle on the CBA financial planning scandal only to wait 16 months for the Australian Securities and Investments Commission to act [see p. 20 in this issue].

Whistleblower protections for public servants were strengthened last year. Private sector workers, however, are "protected" by much less rigorous laws that a host of groups and experts, and ASIC itself, say need reforming.

The issue has become urgent in light of the budget cuts inflicted on ASIC.

Two years ago, the International Monetary Fund warned about ASIC's funding levels; to bluntly paraphrase, it said ASIC was struggling to do its job with the resources that it was being given.

Even ASIC itself has admitted that the imminent cuts, of \$120 million over four years, will impede its operations, especially in surveillance. That the cuts were announced so soon after a series of scandals in the financial advice sector makes them even more incomprehensible.

One consequence, according to ASIC chairman Greg Medcraft, is that ASIC will need to rely more on whistleblowers.

Fair enough. As the SEC has demonstrated, whistleblowers can be powerful sources of information. Usually, certainly in this reporter's experience, they are motivated by a strong sense of right and wrong, and mounting frustration that those breaking the rules and hurting other people are getting away with it.

But right now, in Australia, we ask far too much of them. We ask them to risk their livelihoods and their careers. We ask them to endure stress and uncertainty. We ask them to pay a potentially huge personal and financial cost for the greater good.

If we want more whistleblowers in the private sector, we must treat them better.

ASIC says it is already doing this, spurred on by last year's damning Senate committee report into its performance.

Medcraft says the agency now has dedicated whistleblower liaison officers, and ASIC has also committed to a devoted Office of the Whistleblower, a recommendation of the Senate report. It's a start, but nowhere near enough. No one is suggesting \$30 million rewards — but surely no one should end up dramatically worse off as a result of exposing wrongdoing.

A thorough review and reform of our corporate whistleblower laws is required. And Morris, for one, believes that "a total clean-out of the current regime at ASIC" is needed before any whistleblower should place their trust in it.

Little has been said, either from ASIC or the government, about another recommendation of the Senate report: that options for reward-based incentives for whistleblowers be considered. The government's response to the committee barely acknowledged the idea.

Yet it was echoed last month by Ian Hanger, QC, in his report of the pink batts royal commission. He called for the Law Reform Commission to examine the merits of False Claims Act-type laws in Australia, to combat fraud against the state.

One issue, raised by Medcraft, is that the penalties in place in Australia for some white-collar crimes, compared to the US, are relatively small. Any whistleblower reward would therefore be correspondingly smaller.

The solution, as Morris sees it, is to introduce a "much stiffer" penalty regime for corporate crime, with compensation to be paid for whistleblowers out of the money recouped from the guilty company.

Let's consider a pragmatic solution to our whistleblower problem. It's time to look not just at protecting whistleblowers but also at compensating them. And even, perhaps, at rewarding them.



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## Whistleblowers Australia contacts

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**Postal address** PO Box U129, Wollongong NSW 2500  
**Website** <http://www.whistleblowers.org.au/>

### 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, [ckardell@iprimus.com.au](mailto:ckardell@iprimus.com.au)

**Wollongong contact** Brian Martin, phone 02 4221 3763.  
**Website** <http://www.bmartin.cc/dissent/>

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**Tasmania** Whistleblowers Tasmania contact, Isla MacGregor, phone 03 6239 1054, [opal@intas.net.au](mailto:opal@intas.net.au)

**Schools and teachers contact** Robina Cosser, [robina@theteachersareblowingtheirwhistles.com](mailto:robina@theteachersareblowingtheirwhistles.com)

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Thanks to Lisa Hamilton and Cynthia Kardell for proofreading.

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## This issue of *The Whistle*

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This is the longest issue of *The Whistle* yet published. It begins with a special section in memory of Jean Lennane, a key figure in the history of Whistleblowers Australia. She played such a crucial role that it is reasonable to say that, without her, the group might never have survived, much less thrived.

Following a film review by Kim Sawyer on page 12 is an article by me about leaking. This is a work in progress: I welcome your comments. If you know people who might be potential leakers, or who support leaking, you can send them a copy. Download it from <http://www.bmartin.cc/dissent/documents/rr/leaking.pdf>

Next, starting on page 19, is a report on the annual Whistleblowers Australia conference, held in November last year. There were many stimulating talks, with summaries provided here. These give a flavour of the formal part of the conference. Those who attended will know that some of the most fruitful discussions occurred during tea breaks and meal times.

Following the conference report are the draft minutes of the annual general meeting, held the following day. What you read here is a record of the formal business, but in many ways the AGM is a continuation of the conference, with reports and lengthy discussions involving both experienced and new members.

Then, on pages 30–31, is “media watch,” with just a few articles. Every week, far more news reports and articles about whistleblowing are published than can be reproduced here. If you’re interested, set up a Google Alert for “whistleblowing” and you’ll get a sense of what’s in the news.

## 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.

To subscribe to *The Whistle* but not join WBA, the annual subscription fee is \$25.

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.

*Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone 07 5448 8218, [feliksfrommarcoola@gmail.com](mailto:feliksfrommarcoola@gmail.com)*