

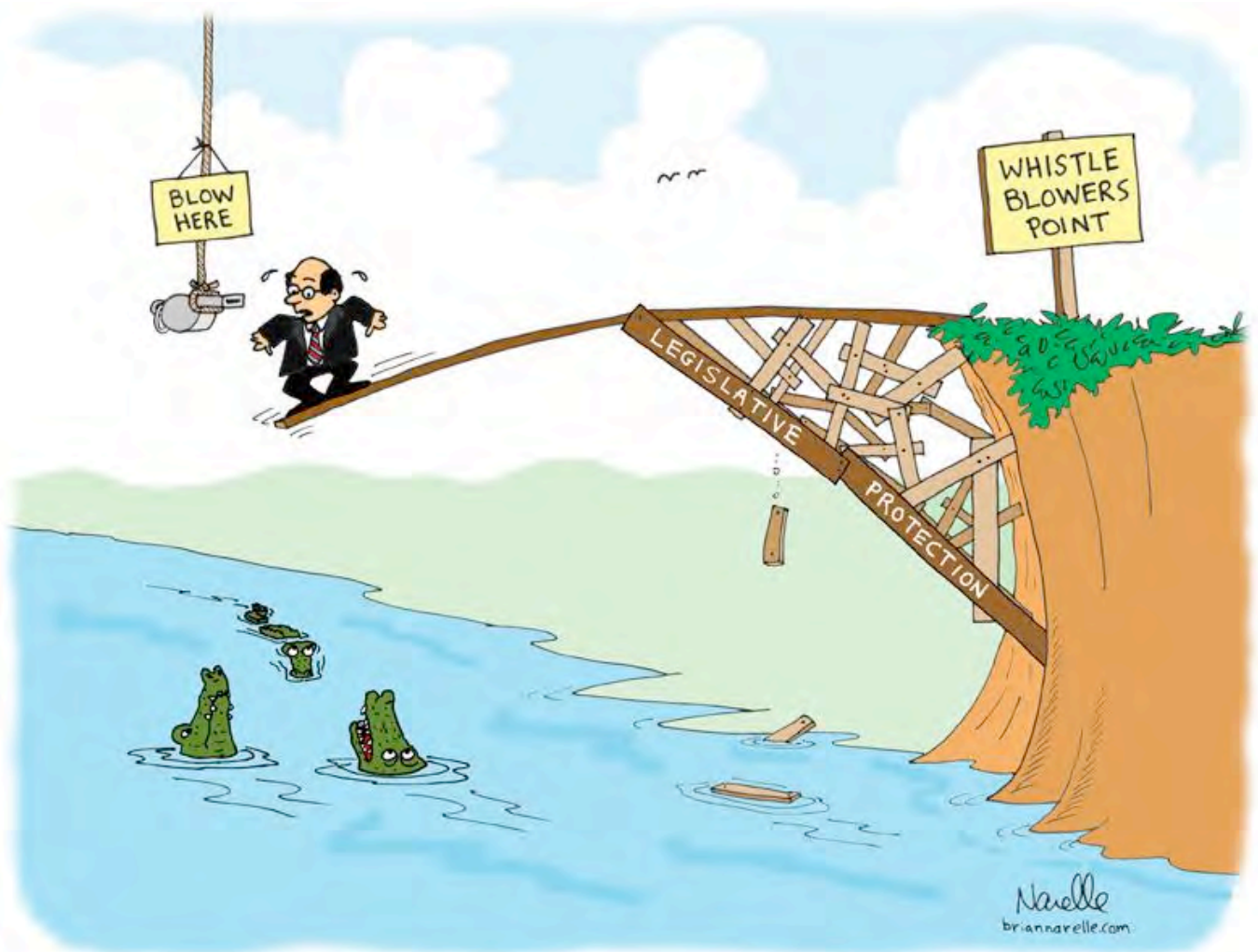
*"All that is needed for evil to prosper is for people of good will to do nothing"*—Edmund Burke



# *The Whistle*

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### BOOK REVIEW

#### A whistleblower in the world of psychiatry: the story of Kevin Moylan

Review by James Page

Kevin Francis Moylan was born in Shepparton, country Victoria, and worked for many years as a psychiatric nurse in the northwest of Tasmania. He is also a whistleblower, having reported maladministration and criminal conduct to his superiors, to no avail, over an extended period of time. He also suffered assault and ongoing harassment. His concerns were eventually tabled, without his consent, in the Tasmanian Parliament.



Kevin Moylan

Kevin has recently published his story in book form, under the title *One Flew over the Kookaburra's Nest*. The title is an Australian twist on Ken Kesey's 1962 novel and critique of the practice of psychiatry, *One Flew over the Cuckoo's Nest*, which was subsequently made into an award-winning film of the same title in 1975, directed by Michael Douglas.

The book is divided in two. Part One deals with Kevin's experience as a psychiatric nurse in Tasmania, and Part Two deals with his experience as a whistleblower.

It is both a disturbing and uplifting book. It is a disturbing book in that it raises so many questions about mental health in our society. How do we create a more compassionate society? How do we create meaning in society?

These are complex questions, and such questions inevitably flow from reading about the many tragic cases that Kevin had to deal with as a psychiatric nurse.

My own feeling is that the answer may lie, in part, in not encouraging such a hyper-competitive society, where success is everything, but rather in developing a society where we feel more willing to express our weaknesses, doubts and vulnerabilities. A book like this is a good start in this task, as Kevin is quite open and indeed courageous about expressing his own vulnerabilities and weaknesses.

It is a disturbing book also because Part Two reveals the well-worn litany of whistleblower vilification that organisations routinely visit upon those who dare speak the truth. The only saving grace is that in the foreword, Jill Illife, formerly of the Australian Nursing Federation, credits Kevin Moylan for being a catalyst for the Federation developing a policy of whistleblower support. If only other unions and institutions would follow suit.

The uplifting aspect of the book is how Kevin dealt with his post-traumatic stress disorder, brought on by his experiences as a psychiatric nurse, by the serious assaults that he suffered, and by the victimization and betrayal he experienced as a whistleblower. Kevin adopts various strategies, including simply going bush.

For instance, after leaving Tasmania in despair, Kevin finds himself homeless. He writes: "The problem is—where can I sleep safely tonight? Answer: back in the bush is where I love life, under a gum tree, far away from ... strife. ... on the banks of the Murray River is where this burnt-out specimen decides to lay his weary bones. Fred the kelpie is my sole companion and guardian, he loves going camping more than me ... My saving grace was a smelly four-man canvas tent, three fishing rods, a gas barbecue, transistor radio and a box of dry matches" (p.183).

Healing is an important issue for whistleblowers and for whistleblowing research. There's something very Australian about Kevin Moylan's approach to this. Get alone. Let the

bush heal you. There are shades of Henry Lawson in his approach. Of course, there is much more to recovery from PTSD than this, although what Kevin writes is nevertheless very evocative.

This is a self-published book, and my only criticism is that in parts the book could have benefitted from closer editing. This is, however, a minor criticism. I think that the book is important as an addition to the growing literature on whistleblowing and whistleblowing recovery, as well as raising important social questions about the nature and direction of Australian society.



Kevin Moylan 2016. *One Flew over the Kookaburra's Nest*. Newstead: Kookaburra Books. With index and illustrations. 225 pages. Available from Dromana Books, [dromanabooks.com](http://dromanabooks.com)

Dr James Page is an adjunct professor at the University of New England.

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### A problem of culture

Kim Sawyer

Whistleblowers know they are agents of change. They are trying to change culture. They are trying to right wrongs that should be righted. They are trying to make the indifferent less indifferent. So while I have long advocated for whistleblowing legislation, I know legislation will not solve that which needs to be solved. The problem is the culture.

I was reminded of this in a recent conversation with a Swiss colleague.

He spoke of a leading academic in Zurich who had been found to have published the same article using a different title in three different journals. It is akin to multiplying your vitae three times. The academic was dismissed and it had spill-over effects on the university and all who had worked with him. Academia can be very unforgiving when it chooses to be.



Publications can mount up when you use the same article more than once

At the risk of self-indulgence, it reminded me of my first whistleblowing case which is now so long ago that it can be visited. In 1993 as part of a wider issue, I made a formal complaint against an academic. The complaint was that the academic had an article published as a chapter in a book (with three other authors), then published it on his own (or at least 98% of it) under his own name but with a different title, and then submitted it to a journal under his own name using yet another title. It was about to be published until the editor withdrew it. The referee of the submission alerted me. I was disinclined to make the complaint; however after deliberating for more than a month I made the complaint and was joined by eight others. There is no template for whistleblowing and it is never easy.

The lawyer of the university wrote that there was a *prima facie* case of academic misconduct, but the Vice-Chancellor dismissed the complaint. The Vice-Chancellor proceeded to write to the seven of us (two colleagues had by then left the university) asking whether we had communicated the allegations to *persons who had no interest or duty in receiving them*. We replied that we had not communicated the allegations to *persons who had no interest or duty in receiving them*.

That was not sufficient. The Vice-Chancellor continued to write to us asking for the names of those to whom we had communicated the allegations; we appealed to the Visitor of the university (the Governor of Victoria) and advised the Vice-Chancellor accordingly. The Vice-Chancellor then charged the seven of us with serious misconduct for disobeying his instructions. The Governor appointed the Chief Justice to determine the matter. The Chief Justice took more than 400 days to find that we were not members of the university and could not appeal to the Visitor because the university had not prescribed a statute making staff members of the university. Students were members, members of the council were members, but staff were not. One month later, the university prescribed the statute and staff were made members of the university. The Senate Committee that reviewed this matter in 1995 posited

It does not reflect well that the University had not fulfilled its obligations and ensured that it had made the necessary arrangements under its Act to prescribe staff as corporators of the University. By not doing so, it denied a right of appeal to the Visitor by its staff and by coincidence, prevented an independent investigation of the matters complained of.

The Senate Committee recommended “an independent consultant look at the matters raised and suggest regulatory changes to the education system so that these events cannot reoccur.” It never happened.

Three decisions, the decision of the Vice-Chancellor, the decision of the Chief Justice and the decision not to appoint an independent consultant, illustrated the Australian institutional culture of the 1990s. It is the same culture today. As whistleblowers, we are never as important as institutions. As whistleblowers, our risks are never as important as the risks of institutions. As whistleblowers, our cases are always determined by those who have never blown the whistle, and our rights are an afterthought. The institutional culture does not easily prescribe whistleblowers as members.

The problem is the problem of unfairness when individuals are pitted

against institutions. Those who determine the outcomes of whistleblowing cases rarely think about the person on the other side of the equation. We never met the Chief Justice, and I often wondered whether he ever reflected about the fairness of his decision as I had reflected about the fairness of his decision. We cannot prescribe fairness for it admits too many variations. But we can at least request that those who determine the outcomes of whistleblowing problems, whether they are judges, regulators, politicians or consultants, meet with whistleblowers after they have made their decisions. Perhaps then they will understand whistleblowing better.

Kim Sawyer is a long-time whistleblower advocate and an honorary fellow at the University of Melbourne.

## What makes a whistleblowing scheme effective?

Cynthia Kardell

I have set out below what I think are the building blocks for an effective whistleblowing system, one that gets to the heart of the wrongdoing and *keeps whistleblowers safe and in their jobs*. I’ve drawn on submissions I made to the 2016 Federal and Victorian parliamentary inquiries, which is why it might seem a bit formal in its style. But I’d like you to bear with me because as crazy as it might seem after nearly a quarter of a century, these ideas which seem so obvious are still being resisted—which is why I think the existing schemes are failing all of us.

### 1. Understanding whistleblowing

Whistleblowing is blowing the whistle in the public interest or, to say it another way, on behalf of the public interest. It is often conveniently described as public interest whistleblowing or a public interest disclosure, but what you have to understand is that there is no other sort of whistleblowing other than in the public interest.

This very simple concept is underpinned by understanding that legally, the whistleblower is acting as a relator on behalf of the public and, with two exceptions, is never the injured party. The injured party is the immediate



department, the wider institution, agency or corporation, or the public at large however it is characterised on the facts.

In law, the term given to a person who brings a claim on behalf of another party or interest is a relator, which term is used in false claims actions brought by whistleblowers on behalf of the state in the USA. In our system we are more familiar with the function of a relator as it applies to, for example, the director of public prosecutions in bringing criminal prosecutions on our behalf. And increasingly we are seeing it played out in terms of a whistleblower going public in the media.

There are a few exceptions to the rule that whistleblowers do not have a personal interest in bringing the claim: (1) where the whistleblower is one of a class of persons who is also personally injured by the wrongdoing, as in the case of the Myers cleaner who blew the whistle on systemic wage fraud; (2) where the whistleblower is also involved in the wrongdoing, for example Kathy Jackson, former official of the Health Services Union and (3) where malice drives making a disclosure. None of these exceptions negate the disclosure being accepted, treated and protected as a protected disclosure.

Public interest whistleblowing or public interest disclosures (hereafter PIDs) can and should be distinguished from employment related grievances on the facts alleged by the disclosure and they need to be, so that they can be properly handled, investigated and resolved and not wrongly treated as employment-related grievances by management with the potential to frustrate the process and harm the discloser.

With one exception, employment-related grievances should not be protected or treated as a PID. The exception is an employment-related grievance received from an employee in his or her personal capacity, who claims to have suffered injury or detriment as a consequence of having made a PID.

## **2. Understanding how corruption becomes a top-down cultural norm**

Executive and senior management has the power and the capacity to make the exercise of corrupt self-interest the

norm or not. If it is the norm then everyone down the line knows that they can pretty much do anything, so long as they cover for executive and senior management, knowing that if it all goes belly up it will be their fault.

If legislators fall into the trap of thinking that it is just a few bad apples, not people like us, and so stop short of ensuring that management actively and publicly holds itself to account by putting the necessary constraints in place, then bad behaviour will continue to flourish—because they are people like us!

## **3. The method used to assess the facts disclosed should not hinge on the whistleblower's credibility.**

The threshold issue to determining whether to investigate a PID almost invariably hinges on the credibility of the whistleblower rather than whether there is any credible evidence available in a preliminary sense that is likely to substantiate the alleged wrongdoing. It's a wrong practice, because even the most scurrilous individuals can be right on the money when it comes to whether what they allege is right. Making judgements based on the whistleblower's credibility works against existing legislative objectives and is heaven sent for the wrongdoer. Inevitably, it lays the ground for self-serving and gossipy assumptions about the whistleblower to kill off the PID and crystallise into mobbing and even worse forms of retaliation.

## **4. Investigative officers must be legally independent.**

Investigative officers must be independent legally and in real terms to counter the coercive pressures brought to bear by an executive and senior management keen to see the issue buried. Structural reform is required to ensure that investigators are able to resist coercive pressure in the workplace when deciding what can and should be investigated.

This is easily achieved by ensuring that all of the PIDs are investigated by an independent external body like the IBAC and Ombudsman, including PIDs I'd describe as "small beer," which when resolved do so much more to build a strongly ethical culture from the ground up than just flicking them to the statistician for policy analysis.

Alternatively, all relevant employer bodies should be required to formally guarantee their investigative officers exercise professional independence in carrying out their duties, as a part of their employment contract and conditions. Penalties should apply where coercive pressure is brought to bear.

The consequence of doing nothing is more of the same. There might be another bribery scandal, like the one involving senior executives from the RBA subsidiaries NPA and Securrency, which is still unfolding in our courts and costing us millions of dollars. Or there might be more allegations of cover-up like those currently swirling around the St Vincent's Hospital executives over a medical oncologist's prescribing practices, which isn't likely to go away any time soon.

## **5. The protection of whistleblowers can't be left to investigators or executive and senior management.**

The protection of whistleblowers is central to ensuring the growth of an ethical and accountable culture and should not be left in the hands of an external investigative body or agency management. This is because of the conflicts that inevitably arise between what are always going to be competing interests.

Whistleblowers should be part of the investigative process too, much like a fellow auditor might. It would deliver better outcomes and progressively build a culture of respect for whistleblowers, which would go a long way toward protecting them. But it won't happen if we continue to ignore the challenges that competing interests impose.

Let me try to explain. If an external investigative body also has responsibility for whistleblower protection in circumstances where a whistleblower is an entirely disinterested party, s/he can theoretically at least become a part of the investigative process. But it won't ever happen, because the investigative body knows the whistleblower can't be part of the investigative team, a potential witness in proceedings and possibly a victim needing to be protected all at the same time.

This dilemma is even more apparent if the whistleblower is also a person of interest in the investigation, for example Kathy Jackson, the whistleblower

in the HSU scandal, or if s/he also seeks personal redress, for example the cleaner and whistleblower in the Myer wage fraud scandal. In such cases, the investigative body will inevitably, and you might even say properly, put its investigative needs first, which tends to reinforce a culture which treats a whistleblower like a low-life police informant—so protection doesn't even figure.



Kathy Jackson

If whistleblower protection is left in the hands of executive and senior agency management, you can add another dimension to the problem. Not only is the whistleblower potentially a part of the internal investigative team, a witness in proceedings and a victim of a reprisal but also a threat to management self-interest. It's not made any easier for the whistleblower when the in-house legal counsel, employed as the head of human resources, is coerced into holding herself out to be professionally independent of management, when in fact s/he is just another employee, like any other, with a particular skill set. This is a system that was always going to fail the whistleblower and it does just that.

## 6. Whistleblowing needs a defender or champion.

The only way to ensure the system doesn't fail is to set up a body that is not required to satisfy what are always going to be competing purposes or interests, so that it can monitor and even intervene to protect a whistleblower, where an agency's actions make it necessary so to do. I will call it a public interest disclosure agency or PIDA.

It would publicly promote whistleblowing, protect whistleblowers, investigate claims of reprisal, register and monitor the investigation of public interest disclosures and develop the capacity for long-term evidence-based analysis and public review. It may

seem like a step too far, but in fact it is way overdue. We first proposed a PIDA almost 25 years ago! It was cost effective then and an investment in a future where ethical, open and accountable organisations would become the norm. On any measure now, it's urgent.

## 7. The management must publicly engage with whistleblowers and not just hold others to account.

Legislative amendment can't do this job alone. Managers and users alike must be thoroughly educated to understand and be able to talk about the concepts involved, so that they can develop the necessary skills and, ultimately, an insight into why *openly supporting* whistleblowers in their work is the only way to go if they are serious about wanting the organisation to be ethical and accountable. Otherwise ignorance will continue to provide a place for a top-down culture of cover-up and retaliation to flourish as the norm. The key to understanding what an ethical and accountable organisation might look like is to understand the difference between being "held to account" and "making yourself accountable" and then to have management make the necessary adjustments in policy and process to model the latter. Because it is clear the current PID systems are designed and operate for management to hold others to account and often for reasons that are dubious at best.

The better approach is to understand what is required to assess and investigate a PID properly and then do that *openly and proactively* and put it all out there on the public record as it unfolds for all to see now and in the future. This is making the entire organisation accountable in real time when it matters. And executive and senior management must lead by example, rather than just continue as they have, to manage the PID process as it applies to others.

It is the way in which an organisation *publicly* engages with its whistleblowers in dealing with the wrongdoing which sets the organisation apart as ethical and accountable or not.

## 8. Legal protections available to whistleblowers must reflect the reality on the ground in the workplace as it unfolds.

The current protections are mostly only relevant once you've been sacked: they do not reflect or provide for what actually happens *as it happens*. They do not keep whistleblowers safe and in their jobs. Reforms to force employers to choose investigation over cover-up are long overdue.

## 9. The wrongdoer should be the target.

There needs to be fundamental reform to make the wrongdoer the target, not the whistleblower as is presently the case! Only this will deliver useful, timely protections that keep whistleblowers safe and in their jobs. Employers should have to publicly support whistleblowers or face financial penalties if they don't. Investigators must be able to report independently in real time on their progress, the outcome and their recommendations. Those reports must be publicly reviewed within the organisation and openly linked to consequent changes in the workplace. Whistleblowers must be publicly recognised and thanked for their service whether or not the wrongdoing is established.

## Postscript

I will be expanding on these ideas when I make a submission to another federal whistleblowing inquiry this year.

The Coalition government has agreed to this inquiry, as to get their plan to set up a registered organisations commission for unions through the Senate. Submissions are to be in by 17 February 2017.

It invites further submissions on the existing public sector system and (by agreement with Senators Xenophon and Hinch) on whether existing protections should be extended to cover private sector and NGO whistleblowers and, finally, whether a false claims act like that which operates across the USA would be a good thing. If you've any good ideas, let me know. I'll keep you posted.

Cynthia Kardell is president of Whistleblowers Australia.

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## WBA conference

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WBA's annual conference and AGM were held at the Uniting Church Convention Centre, North Parramatta, Sydney on 19–20 November 2016. WBA President Cynthia Kardell introduced each of the speakers; her remarks are reproduced here. For the other speakers, you can read Brian Martin's notes on the spoken presentations or edited versions of their documents.

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### Conference

#### Saturday 19 November

- 8:15 Registration (coffee & tea)
- 9:00 Welcome: Cynthia Kardell
- 9:15 Jodi McKay: political donations whistleblower
- 9:55 Karen Burgess, Aspect Autism whistleblower
- 10:35 Morning tea
- 11:05 Jane Doe, government agency whistleblower
- 11:45 Lyn Simpson, live exports whistleblower
- 12:25 Lunch
- 1:45 David Isaacs, Nauru detention centre whistleblower
- 2:25 Alan Kessing, Customs whistleblower
- 3:05 Afternoon tea
- 3:35 Katrina McLean, community housing whistleblower
- 4:05 Robina Cosser, education department whistleblower
- 4:45 Brian Martin, Music for our ears

### AGM and talks

#### Sunday 20 November

- 8:15 Registration (coffee & tea)
  - 9:00 AGM
  - 10:35 Morning tea
  - 11:05 AGM, continued
  - 12:25 Lunch
  - 1:45 Gabor Szathmari, CryptoAustralia
  - 3:05 Afternoon tea
  - 3:35 David Vaile, UNSW Faculty of Law
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### Jodi McKay MP Political donation whistleblower

**Cynthia's introduction** (based on information sourced from Wikipedia)

Jodi McKay began her career as a journalist entering the private sector in corporate communications and marketing. She also served on the Board of Hunter Medical Research Institute, The University of Newcastle, Research Associates and Hunter Manufacturers' Association prior to entering politics.

Jodi is a member of the New South Wales Legislative Assembly, having represented Strathfield for the Australian Labor Party since 2015. She previously represented Newcastle from 2007 until her defeat at the 2011 election. Between 2008 and 2011, Jodi held a number of junior ministerial responsibilities in the Rees and Keneally governments, among them Minister for the Hunter, Tourism, Small Business, Science and Medical Research, Commerce, and Women. Currently she is the Shadow Minister for Transport.



Jodi McKay

#### Jodi's talk (notes by Brian)

Jodi said she doesn't see herself as a whistleblower; it's not a label with which she is comfortable, because she had a duty. However, she recognised the relevance of the label when invited to speak at the WBA conference.

Her story took a long time to play out. She is now the local member for

Strathfield, something she couldn't have imagined years ago. She was previously member for Newcastle, a minister for the Hunter in the Labor government, responsible for land in the region. Newcastle is the world's largest coal export port; Jodi wanted diversification of exports.

Nathan Tinkler was a rich, powerful and influential businessman in Newcastle who wanted a particular piece of land, a container terminal. In the months prior to the March 2011 election, Jodie felt isolated and didn't quite understand what was happening. She knew the Labor Party was unpopular but she also knew she was popular in the electorate.

Tinkler offered to make donations to her campaign, in violation of laws. She declined, and then various events occurred. There was a leak. The Liberals poured hundreds of thousands of dollars into the election campaign. Scurrilous flyers were distributed.

She lost the election by less than 2000 votes, moved to Sydney, reflected on what had happened, and wrote a letter to ICAC about the various events, saying she didn't know whether they were connected, but it was her duty as a former minister to report them.

ICAC said it wouldn't investigate and returned her documents which, in a catharsis, she shredded. She started applying for jobs but was repeatedly knocked back, presumably due to all the negative material on the Internet. Eventually she obtained a job with a non-profit organisation and got on with her life.

But then she was contacted by ICAC: apparently others, on the Central Coast, had been approached similarly to the way Jodi had been, showing a pattern of Liberal Party donations. So Jodi was brought back to the issue.

Testifying to ICAC, which means being watched by rows of lawyers, is daunting. She was asked whether she knew about the role of Joe Tripodi, Labor power broker. Tripodi, her own Labor colleague, had been involved in the flyer used to undermine her, funded by Tinkler. She suddenly understood how all the events of previous

years fitted together, and this understanding triggered a rush of emotions. She cried, which at ICAC is not cool.

Jodi's testimony led to a huge media interest. She was asked whether she'd ever go back to politics, and said no—not in Newcastle.

In the run-up to the 2015 election, it turned out that the only seat for which the Labor candidate hadn't been decided was the one where she happened to live: Strathfield. She hadn't been known previously, until the publicity deriving from ICAC.

The ICAC investigation was interrupted by Margaret Cunneen's legal action and other matters. When a journalist contacted her about a leaked Treasury document, she asked why the journalist didn't enquire *why* the document had been leaked.

There were some good things coming out of the ICAC investigation, even though no one was charged with an offence. In particular, there are now stronger penalties for illegal donations. However, the new statute of limitations (10 years) was not retrospective, so it didn't apply to her case.

Andrew Clennell from the *Daily Telegraph* seems to do everything possible to bring her down.

The new ICAC legislation makes its operations fairer. However, ICAC is unaccountable. Either witnesses are torn apart and named as corrupt, or torn apart but not named, and not exonerated.

She thinks many other MPs would have done what she did, so she doesn't feel like a whistleblower.

In response to questions, Jodi said that as an MP and a shadow minister, she welcomes contacts with constituents and members of the public with information relevant to her portfolio. She can make representations on behalf of constituents, but needs to be careful. If she knows someone in advance, it's easier to act on their behalf. She welcomes people providing information, especially in relation to her portfolio, that she can use to develop an understanding of activities and take action.

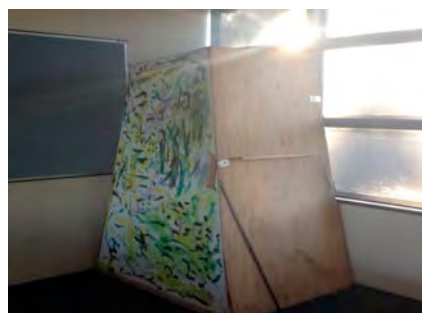
## Karen Burgess Autism Spectrum (Aspect) whistleblower

**Cynthia's introduction** (Information from [whistleblowingwomen.com/](http://whistleblowingwomen.com/))

Autism Spectrum Australia (Aspect) runs a day care centre at Heatherton, Melbourne. It has programs for 30 people a day, aged 16 to 50, most of whom cannot talk.



In 2014, staff at the Heatherton Aspect centre in Victoria built a two-metre-tall wooden box and fitted it with a metal lock. Clients were going to be locked inside the box. Clients had painted the outside of the box. Egg cartons were going to be fitted inside the box for sound-proofing. The box was going to be called a "de-sensitising box." It was intended to be used as a calming device.



Karen started work at the Heatherton Aspect day care centre in early 2015. She immediately ordered the dismantling of the box, but says the staff who built it ignored her. "They laughed and said the box was staying ... they thought it was a good strategy," she said.

"It was just abhorrent," Karen said. "The box epitomises the type of practices that were occurring at that site. There was a complete disregard for the clients as human beings."

She made a complaint about the box to the Victorian Advocacy League for Individuals with Disability (VALID). They referred the complaint to the Disability Services Commissioner in July 2015.

"Staff were led to believe that it was an approved practice," Aspect employees told the Disability Services Commissioner at a meeting in July 2015. "Everyone at the site knew about the box."

Aspect sacked Karen on 15 July 2015, listing serious grievances with her performance. It alleged that Ms Burgess did not work within its policies, acted outside her authority and filed paperwork late.

She brought an unfair dismissal claim against Aspect. She alleged that she was fired after speaking out about the box and other client abuse. Aspect claimed she had stolen company documents. In the course of the proceedings the parties settled for an undisclosed sum without Ms Burgess being held to a gag clause.

VALID chief executive Kevin Stone slammed Aspect's treatment of Karen. He said she had been put under "enormous pressure, to the point of intimidation." "It seems beyond belief, and certainly beyond coincidence, that this former senior staff member received a letter of termination on July 15, within hours of the Disability services Commissioner advising the service of its involvement."

In September 2015 Aspect hired a crisis public relations firm. After hiring the crisis public relations firm, Aspect said it was "impressed" with Ms Burgess's decision to report the box.

Karen has assisted the Police in their investigations and made submissions to parliamentary inquiries into disability services and whistleblower protections.

**Karen's talk** (adapted by Brian from her slides and accompanying text)

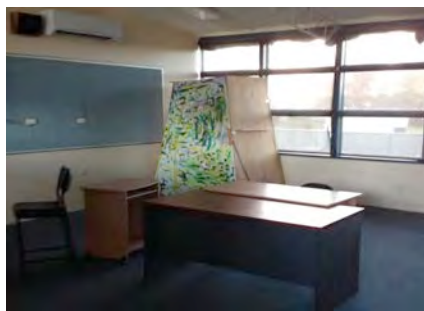
I am going to talk today about my experiences whistleblowing in the disability sector.

My whistleblowing story is not unique. I made a complaint, but the employer didn't deal with it. It went public. This made me a whistleblower. The employer didn't like this and so continued to threaten me.



The service at the Heatherton site is designed to provide day activities to adults and young people with autism and other disabilities. The clients at this particular site have complex and challenging behaviours. My role as the Service Leader was to oversee the operations of this site.

During my employment I made a number of complaints regarding various concerns, specifically related to the number of restrictive practices that were occurring on a regular basis and were harming clients. My observations included poor and illegal practices, poor quality of client care and client abuse. The restrictive practices were not appropriately reported and would not even comply with the guidelines as approved by the Office of the Senior Practitioner (OSP) as defined under the requirements of the Disability Act 2006.



Confinement in the box was used as a form of punishment. Staff physically assaulted clients. This occurred regularly and was the common method for pacifying clients. The language used was “physical restraint” in describing staff-client interactions, but the restraints used were not approved, were not communicated or reported when they were used and were not discussed with significant others such as parents and other professionals.

I observed staff gang up on the clients to get them to comply with instructions. I observed staff standing over clients in a threatening manner. If clients did not comply, the staff would force the clients to complete particular demands. Staff would yell or physically move clients to force them to complete meaningless activities. For example, staff would force clients to take medication by shoving the medication down client’s throats or by holding them and forcing them to the ground. Staff would grab clients to

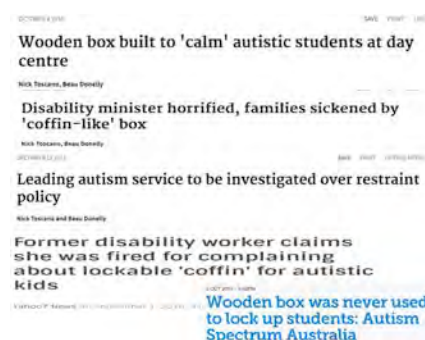
move them or hold them in pressure point positions. This was reported to DHHS and Aspect Management. No action was taken against staff who did this. The person who reported these events was later fired.

Clients were locked in classrooms at the site for hours. They were not provided with water or food while locked in the classroom. Some clients had medication, and this was not administered during these lockout periods. Instead staff disposed of the medication, so not to alert other services to the fact the medication was not administered to the clients.

These are just some of the problems I observed. In summary, I discovered that:

- There was a history of abuse that had existed for over 15 years.
- Abuse wasn’t the only criminal activity occurring.
- People knew and accepted it.
- The people who knew were also the ones who were meant to offer protection.
- The system I believed to be in place to protect people with a disability did not work.
- Staff were engaging in abusive practices and believed it was “evidence-based practice.”

I was fired on 15 July 2015, less than an hour after an officer from the Disability Services Commission had spoken to the Victorian manager of Aspect. Rather than addressing complaints, the organisation made threats, terminated my employment, terminated other staff who continued to complain, and intimidated and threatened me with legal action. In my experience, Autism Spectrum Australia went to great lengths to ensure I didn’t speak out about what happened.



For me, the reality of whistleblowing included false claims of confidentiality agreements, threats (including of costly litigation), harassment, stalking, false statements, allegations of criminal conduct and false allegations of police investigations into the alleged criminal conduct.

Thereafter I proceeded through all sorts of agencies seeking redress, as shown in the diagram.



For more details, see my submission to the Family and Community Development Committee of the Victorian Parliament:

[http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Autism/Submissions/S058\\_Karen\\_Burgess.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Autism/Submissions/S058_Karen_Burgess.pdf)

## Jane Doe Government agency whistleblower

**Cynthia’s introduction** (from [bmartin.cc/dissent/documents/NPWS/](http://bmartin.cc/dissent/documents/NPWS/))

The National Parks and Wildlife Service of New South Wales, Australia, is the subject of a detailed critical examination by “Jane Doe” titled “NPWS Management—A protected species!” She uses categories developed by the Government Accountability Project to help make sense of her experiences.

The names used in the manuscript, excepting the Minister for the Environment and Director-General, are pseudonyms in accordance with agency request. Jane’s article is published on Brian Martin’s suppression-of-dissent website under the category of “environment.” This brief extract provides the basic facts.



## NPWS Management - A protected species!

### NPWS Staff - A threatened species!

By Jane Doe, B.Bus (UWS), Grad Dip Mgmt (USQ)

\* The names used in this manuscript excepting the Minister for the Environment and Director-General are pseudonyms in accordance with agency request.

This document is located on the  
Suppression of dissent website  
in the section on Documents

"The following is a summary of my whistleblowing experience with the NPWS. It is a striking illustration of management abuse of unaccountable power in the New South Wales government, and of a weak and ineffective union movement that appears powerless to stop the victimisation and harassment of their members. In this instance I had little choice but to speak out about wrongdoing. I was being forced to sign off fraudulent petty cash dockets and purchase orders written by staff for dubious purchases. In addition annual entry permits (in excess of five hundred) to NSW National Parks went missing across the District I worked in. The whereabouts of these permits were never investigated by the agency. I did, however, notice permits missing from gate collectors' reconciliation sheets. On one occasion I wrote to a collector about a permit not accounted for. NPWS management was made aware of this. They were also aware that collectors often did not arrive for duty until sometime after they had signed their arrival time on their timesheet. Park entry fees, which were not in accordance with the fees set by the Minister, were on occasion charged to visitors to the National Park. No audit mechanism to account for revenue for park entry fees existed when gate collectors alternated between issuing automatic ticket to manual tickets for park entry."

#### Jane's talk (notes by Brian)

Jane's story involves all sorts of problems in the NPWS, including permits to parks that were not paid for, and presumably given to friends or sold on the black market. Some staff were not being paid their full entitlements, whereas others were not doing their jobs. Money went missing.

Jane reported the problems to management and then to various watchdog bodies, but none did anything effective. Instead, she suffered all sorts of reprisals. She was referred to a psychiatrist. Her private emails

were downloaded from the NPWS server.

Eventually she was brought to a very distressed state. Luckily, she was able to obtain a job in state parliament. She was able to contact Andrew Stoner, who had received a complaint from another NPWS whistleblower. Stoner made a private member's statement to state parliament.

She took the statement to the media, leading to coverage. One problem with media coverage is that it happens and then is forgotten. So she prepared an account that was published on my website, which had many hits and led to some contacts. She sent it to every employee in NPWS.



It's not easy to gain access to MPs, and likewise obtaining media coverage can be difficult.

She modelled her article on the framework given in Tom Devine's book *The Whistleblower's Survival Guide*.

Lessons: collect plenty of information. Write your story, and send it to relevant people. But don't give them great wads of documents: you need to explain the key issues.

## Lynn Simpson Live exports whistleblower

**Cynthia's introduction** (Information from media stories and the October 2016 *Whistle*)

Lynn Simpson worked as a freelance vet on the big freight ships that carry live animals to the Middle East for the religious festivals. Lynn was critical of the conditions on board and said so in 2013, when she submitted a confiden-

tial report to one of the many Government reviews spawned by the earlier revelations of animal cruelty in Indonesian abattoirs. When the Department of Agriculture, Fisheries and Forestry wrongly made her report public she was exposed as a whistleblower.

There has been significant media coverage of Lynn's story and the issues it raises, for example, the cover of an issue of *Maritime CEO*.



Here is the text accompanying that issue.

Today sees the launch of the latest issue of *Maritime CEO* magazine, the title aimed at shipping's top echelon.

Featured on the cover for the first time in the magazine's history is someone who is not a shipowner. Dr Lynn Simpson is the Australian vet who has done more than anyone in history to shine a light on what happens in the livestock trades—she has been delivering a brutal reality of what happens when animals move from Australia to other parts of the world, something that has shocked many. In our lead article she discusses how she entered this niche sector, the things she has seen, and how to improve the sector.

"I loved shipping for its sheer scale and adventure," Simpson tells *Maritime CEO*. "Tragically I was quickly seeing the live export trade's similarities to the historical human slave trade. In the 19th

century, empires were built on the backs of slaves, kidnapped and sold from their home countries. High mortality rates on voyages, and poor treatment in destination countries once on sold. Replace human slaves with live animals in your mind's eye and, well, it's the same scenario."

On the future of this trade, Simpson predicts: "I personally think that public pressure for increased welfare will mean live export of mass numbers of livestock from first world countries will meet an end in the not too distant future. The meat trade will increase and countries will get their protein requirements. Some trade may move to countries that work at more challenging standards and the delivered product may be questionable."

Note: Lynn is a committee member of Whistleblowers Australia and a contact for whistleblowers in the animal welfare area.

#### **Lynn's talk** (notes by Brian)

Lynn spoke at last year's conference. Lynn had made 57 voyages for live exports, as a veterinarian. She made a confidential report about conditions of the animals. It was posted on a government website, and she was then a target for reprisals, and lost her job.

This year, she provided an update on her experiences. She has an ongoing legal action, but lots of other things have been happening.

She was subject to identity theft, with someone impersonating her and sending defamatory emails. She was trying to send email to various agencies and politicians, but they came back as not sent. She investigated and found that the emails had been scrambled: her computer had been hacked. So she printed out the text and posted it to the relevant recipients.



For three years she was on workers' compensation being paid a percentage of her previous wage. She finally resigned. Her court case wasn't going anywhere, so she decided to take her story to the media. At this point she offered her lawyers the option of leaving but they stuck with her. After appearing on the 7.30 Report, she was contacted by all sorts of media. She ended up doing a series of articles for a maritime magazine, *Splash 24/7*, one per week since June. So although the industry and government have dumped her, she survives and continues to bring issues to wider attention.



She has also been writing on animal welfare issues. One of the issues is that live export animals are often medicated before and during the voyage. Because the time between treatment and slaughter is variable, slaughter often occurs before drug residues subside. This raises public health concerns such as the residues themselves and the increase in microbial resistance.

She's been subject to all sorts of threats, via social media. Apparently a lot of people think she should be shot in the head. If someone hammers her, she gets back to them and tries to engage. If they continue three times, she assumes they are stooges and doesn't deal with them any more.

She's also being asked about mental health issues, and writing about them, because of her own experience with PTSD. She was stressed for years through her voyages, and that was before all the publicity and its associated stresses. She's talked to lots of others with PTSD, especially military personnel, and thinks that all of them are decent people. For Lynn, antidepressants do not work, so she's had to find her own path to mental health; her welfare advocacy provides a type of therapy, and her psychologist thinks this is the way to go.

She's being asked about protecting Australia's brand for meat exports (which are about eight times as great as the live export industry).

She has pressed on with media, addressing the critics and exposing the attackers, and has developed a huge online presence. This leads to people

contacting her with more information, which she can use in further articles.

She had her tax returns audited, which seemed suspicious. After Lynn said the Australian Tax Office should look her up on the web and listen to the 7.30 report about her case, the Australian Taxation Office cleared her.

She's had support from many individuals, including some inside the system.

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## **David Isaacs Nauru Detention Centre whistleblower**

**Cynthia's introduction** (based on media stories: Kate Aubusson, *Sydney Morning Herald*, 14 August 2015; ABC radio, 19 June 2015, presenter Joanne Shoebridge)

David is a senior staff specialist at the Department of Infectious Diseases and Microbiology and the Clinical Professor in Paediatric Infectious Diseases, University of Sydney at the children's hospital at Westmead. He also runs a clinic for refugees in Sydney's west. He was invited by the government to work in the offshore detention centre in Nauru, so now David has another hat, he is the Nauru Detention Centre whistleblower and it is in that capacity that he is speaking today.



David Isaacs

There are plenty of articles about his having spoken out about his experiences on Nauru in the media. Two short excerpts provide an insight into what he reported, how he saw it and



what the consequences for speaking out might be.

On 14 August 2015 Kate Aubuson's article for the *Sydney Morning Herald* began:

**"It's child abuse": Australian doctor brought to tears by treatment of Nauru detainees**

AN AUSTRALIAN doctor has been brought to tears by the abuse and trauma he witnessed in Nauru's immigration detention centre.

Paediatrician Dr David Isaacs is one of several doctors, workers and guards turned whistleblowers exposing what they say is a culture of cover up, rape, self harm and abuse on Nauru, in defiance of laws that could land them in prison.

"I saw a six-year-old girl who tried to hang herself with a fence tie and had marks around her neck. I've never seen a child self-harm of that age before," Dr Isaacs told ABC's 7.30.

"After five days, I went home and had nightmares. I didn't expect that.

"I didn't expect to be so, um, traumatised by these people's trauma. These are people, ordinary people and we're treating them with, um—sorry, we're treating them with incredible cruelty," he said, clearly shaken and upset.

"It's child abuse. Putting children in detention is child abuse. So, our Government is abusing children in our name," he said.

And on ABC radio on 19 June 2015, presenter Joanne Shoebridge opened by saying he's

a highly regarded paediatrician but the suffering he saw on Nauru left him with nightmares. But as of next month Professor David Isaacs could face two years jail if he speaks out about it.

In May the Border Force Act quietly passed both houses of parliament and became law. Now teachers, doctors and security staff could be subject to two years jail if they speak publicly about what they witnessed.

"It's all very vague it's all very secretive, it's frightening I think," Professor David Isaacs said.

"It's the sort of thing you might have expected in a very right wing, almost fascist country, certainly not our so-called democratic country.

"So now it says that if I see a child that's in danger or that's seriously ill because of the conditions there and their mental health is really bad, even if I come back to Australia and talk about it to the media, even put it on Facebook, I could face two years in prison. That's appalling."

**David's talk** (notes by Brian)

Nauru is a tiny island near Fiji with a population of only 10,000.



location of Nauru

Nauru hosts a detention centre holding people who had tried to seek asylum in Australia. They are held in a prison-like environment with no prospect of release.

In 2014, David's son Mark was 23 and applied for a job with the Salvation Army at the detention centre in Nauru, was immediately accepted. He was untrained and not prepared for witnessing people in distress, self-harming and having breakdowns. Many of the workers began having PTSD after a matter of weeks.

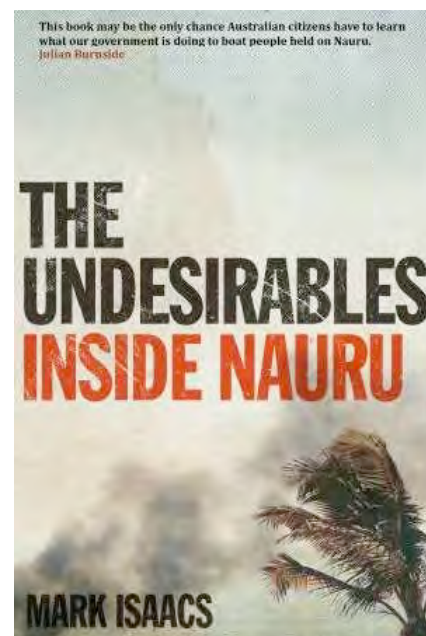
David saw Mark on his periodic returns to Australia and saw Mark trying to deal with the experience. Mark wrote a diary.

Detention centre staff were under strict conditions not to say anything; if they commented on Facebook, they would receive a warning and, the next time, sacked.

Many workers at Nauru, Manus Island and Christmas Island experience vicarious trauma. Some of Mark's friends weren't really interested in

Mark's story, but then they read his diary and were intensely interested.

Mark decided to write a book. Initially he tried to interest publishers in his diaries, but there was little interest. He then obtained an agent, who encouraged Mark to write a book separately from his diary. Mark responded to suggestions, and now has two books published.



David is a paediatrician. He trained in England, then worked at Westmead Hospital for 26 years. He started looking after refugees and their infectious diseases, for example malaria.

A new clinical leader at the hospital, Alanna Maycock, was intensely supportive of children seeking asylum.

In December 2014, David received an invitation to work at Nauru, from a private company (IHMS) that has a contract for caring for people in detention in Australia and overseas. He had to sign a contract that said he couldn't be critical of the government or the company. He asked for Alanna to accompany him.



Alanna Maycock



They were in Nauru for just five days and saw 30 patients. He had never seen anything like the despair.

David offered to the people that he would be their voice. He and Alanna had nightmares for days after returning, so what would it be like for those detained? David and Alanna decided they would speak out. David had little to lose, but Alanna had two young children.

Julian Burnside offered to defend David and Alanna, at no cost, and offered great reassurance.

David didn't set out to be a whistleblower; it just happened. He has great admiration for whistleblowers. There are many cases in which whistleblowers pay the penalty for doing the right thing. Whistleblowers can feel some pride about it.

David was really speaking out because of the secrecy used to hide the torture.

Both major Australian political parties have supported detention policies, introduced by the Labor Party in 1992, and have used tough policies to win votes. Now they are ashamed by what's happening and want to hide information from the population.



Initially David went to Nauru to help children and see what was happening, stimulated by knowing of Mark's experience. He did not anticipate being a whistleblower.

What's happening at Nauru and Manus Islands is torture, and in many ways it's as bad as Guantanamo and Abu Ghraib. The people at Nauru and Manus Island were seeking asylum, and had no idea of when they could be released.

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## Allan Kessing Customs whistleblower

**Cynthia's introduction** (Information sourced from media: Chris Merritt, *The Australian*, 9 November 2012)



Allan Kessing

Allan was a customs officer in 2005 when a damning report about airport security was leaked to the media. Opposition MP Anthony Albanese pushed the national security concerns based on confidential insider information from Allan Kessing for all it was worth. The Howard Coalition Government was forced to invest millions in an upgrade, but later fingered Alan for the leak and prosecuted him for a breach of the Crimes Act. He was convicted in May 2007 on circumstantial evidence and almost reduced to penury. Allan denies leaking anything to anyone, other than to (then) Labor Opposition MP Anthony Albanese.

Just as the Barry O'Farrell Coalition government in NSW later shunned (and prosecuted) whistleblower Gillian Sneddon who had exposed her boss, Labor MP Milton Orkopoulos, as a paedophile, so Labor shunned Kessing in 2012, when it refused to grant Allan Kessing a pardon.

On 9 November 2012 Chris Merritt, legal affairs editor for *The Australian* reported Allan Kessing's chief supporter, independent senator Nick Xenophon, had said "the decision revealed Labor had double standards when it came to protecting whistleblowers in

the public service." "They used him in 2007 as a poster boy for their election campaign, and in 2012 they treat him like a piece of garbage," Senator Xenophon said.

The article records that Labor's Jason Clare MP said "the involvement of Mr Albanese's office, if proved, would not have established Mr Kessing's innocence," because he did not reveal the link with Mr Albanese at his trial and Mr Clare had been advised that "as a matter of public policy, it is not appropriate for the royal prerogative of mercy to be exercised to pardon a person who seeks to raise a doubt about his or her conviction by raising matters that were deliberately not raised, and tested, by them at trial." And that Mr Kessing's assertion that he was innocent of the charge of which he had been convicted meant "the claim that the leaking of the reports was in the public interest is irrelevant to a consideration of your moral or technical innocence of the offence."

Another twist in the tale is that Jason Clare MP had been advised "that there was no internal (Australian Customs Service) investigation into the alleged leak of information to journalists prior to the referral of the matter to the AFP by way of the letter dated June 1, 2005." "Accordingly, the defence were not denied access to information which may have been gathered by an ACS investigation because there had not been an investigation," Mr Clare wrote.

But the June 1 letter from Customs was not provided to Mr Kessing's defence lawyers. Its existence was not known until it was provided to Mr Kessing after the trial by a source inside the AFP. The letter refers to *The Australian's* article of May 31 about the airport security reports and then refers to "subsequent inquiries by Customs."

The letter, signed by Customs internal affairs manager Geoff Lanham, outlines the results of those inquiries and concludes by saying "it would appear from the circumstances that at least two Customs officers who had knowledge of the two reports in question had unlawfully provided information" to *The Australian's* reporters Martin Chulov and Jonathan Porter.

### Allan's talk

Allan provided a wide-ranging account of issues relating to whistleblowing and security. For a taste of Allan's perspective, see the report on his talk at the 2015 conference in the January 2016 issue of *The Whistle*.

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## Katrina McLean Non-Government Organisation whistleblower

### Cynthia's introduction

In 2006 Katrina worked as a program manager for a residential youth drug and alcohol facility. The director of the service at the time had paid her husband's company and a number of her friends pre-paid contracts and some of those friends did not provide any service. Katrina raised it with the COO at the time who threatened her with legal action. She was able to obtain copies of the relevant documentation and approached the funding body.

Net result: the director resigned and the organisation lost two services elsewhere in the state. Katrina was protected under ACT Whistleblowers legislation for taking copies of the relevant documentation.

In 2009 Katrina worked as a client service officer for a community housing provider. The administrative executive gave her son a contract for \$200K to upgrade the capital properties in her portfolio. Her son was a chef with no previous experience in project management. When Katrina raised the need for contracts to go out to tender, the administrative executive stated this was not required for non-government organisations (NGOs)—which Katrina knew to be incorrect.

Subsequently the administration executive contacted Katrina to say that the chairman of the board also had a conflict of interest because he owned a bank franchise in the area of the office headquarters and had made a loan with interest to the community housing provider in a bid for the then Rudd government's stimulus housing funding. The area manager and accountant agreed to provide her with the documents. Katrina approached an opposi-

tion member of parliament with the housing portfolio, who agreed to raise the matter at a Senate Estimates Committee.

The board of the community housing provider interrogated all staff at head office and warned that if any staff member had any contact with Katrina that they would be dismissed, so the area manager and accountant decided that they could not provide her with the documents she needed—with a nil outcome, the result.

Note: Katrina is a committee member of Whistleblowers Australia and a contact for the ACT whistleblowers.



Katrina McLean

### Katrina's talk (notes by Brian)

"10 things I've learned about life after whistleblowing *or* you don't have to be a bunny in the headlights ..."

She said she'd gone through the usual round of problems, with threats, lack of support and everyone thinking she was the mad person. In her first whistleblowing case, the wrongdoer was sanctioned.

Then another matter arose. She was told that a chef, not a contractor, had been awarded a tender that hadn't been advertised. There were lots of dodgy things going on. She had a politician lined up, and media. The chair of the board scheduled a meeting with staff and told them all that if they had anything to do with Katrina they would be dismissed. So two others got cold feet and didn't provide the documents they had promised.

The rest of the workforce was told that Katrina was mentally ill. She was told of plans to manufacture emails to discredit her. The whole approach is to portray the whistleblower as being the problem.

Most of the workers were afraid.

If she had it to go through it again, she would, but in a smarter way.

Today, Katrina told about lessons for the long term.

1. You are not alone.
2. Don't take it personally.
3. Know when to walk away.
4. Keep tabs on yourself.
5. Get extra help.
6. Give it time.
7. Let go of the outcome.
8. Make a decision to move on.
9. Help others.
10. There is a life after whistleblowing for you—if you let it.

Katrina thought for a long time that she would never be promoted, because the CEO of the new NGO she now works for had absorbed the usual negative image of whistleblowing. But things may have changed. You can still hold on to your integrity and still continue with the next stage of your life and not be consumed by being a whistleblower. Katrina has been promoted at this new NGO in spite of the CEO having seen her on the *7.30 Report* in the segment "After the whistle stops."

Afterwards, Katrina emphasised to me an important lesson from her experience: you can have a prosperous life after making the decision to blow the whistle. Some whistleblowers are broken by their ordeal, but it doesn't have to be this way.

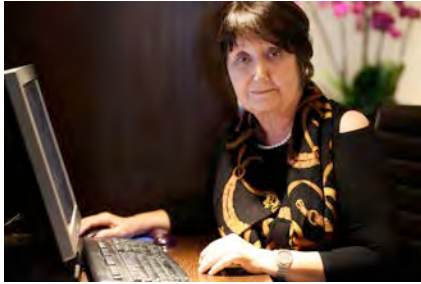
She provided a quote from David Foster Wallace, a US novelist:

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*True heroism is minutes, hours, weeks, year upon year of the quiet, precise, judicious exercise of probity and care—with no one there to see or cheer. This is the world.*

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## Robina Cosser Queensland education whistleblower



Robina Cosser

### Cynthia's introduction

Robina has published a brief account of her story on her website "Whistleblowing Women" as follows:

In 2000 the Grade 7 students at Lynch-Mob State College were roaming about the school, disrupting the other classes.

I discussed the situation with the acting principal, Mrs GR. She advised me to discuss the situation at a staff meeting. She put it at the top of the agenda for the next meeting. But at the staff meeting she spoke before me, talking at length about "a person" who was humiliating students.

The next day a friend warned me that "the person" was me.

My friend told me that Mrs GR was telling teachers that I had told a child to put their nose to the wall, and that if "it" continued, I was going to be put on Diminished Workplace Performance (DWP).

I rang Mrs GR and she confirmed that I was the person she had been talking about to the teachers.

I was deeply shocked by Mrs GR's behaviour. I became very ill. My doctor gave me a week off work and during that week (and) I sought advice on how to deal with Mrs GR's behaviour.

Robina's experience degenerated into the sorry, unforgivable tale that whistleblowers everywhere can relate to and, eventually, it led to her having to give up on a thirty-year unblemished career as a primary, secondary, Art, Special Needs, ESL, Indonesian and Advisory Teacher in England, NSW and Queensland.

Note: Robina is the junior vice president of Whistleblowers Australia and its schools contact. Robina is also the creator and editor of the websites "The teachers are blowing their whistles" ([theteachersareblowingtheirwhistles.com/](http://theteachersareblowingtheirwhistles.com/)) and "Whistleblowing women" ([whistleblowingwomen.com/](http://whistleblowingwomen.com/)).

### Robina's talk

When you ask a whistleblower if they would do it again, they pretty well always seem to say, "Yes, I would have to."

Why?

Why do some people feel compelled to become whistleblowers, while other people feel no such compulsion to disclose corruption?

I remember a comment made by a man who had spent his childhood as a student at a lovely, sheltered Steiner school. Then he had gone out into the world and he discovered that everybody was horrible to each other. He believed that his Steiner school had significantly disadvantaged him in life. I now wonder if my own childhood world may have been similarly limited.

I grew up in a small town in England, during the bleak post-war years. My father told me that he had fought for a better world. He taught me to "tell the truth and shame the devil", "a man is as good as his word" and that "a man's word is his bond." When I was a child I could never imagine a grown man telling a lie, or laughing with pride because he had told an elaborate lie. Men just did not do that sort of thing.

During the 1950's I went to a prep school where the other students were nice kids from nice families. There were no behaviour problems at my school. In the 1960s I attended a selective girls' high school, only mixing with 15% of the population. The other 85% of local children went to another school in another area and we 15% girls had no contact with them at all. Every day we 15% girls sang that we were going to "fight the good fight with all our might." We girls were not being brought up to be passive, or to "go with the flow."



I realise now that it was all a bit colonial. We 15% girls were being trained to go out around the world and teach our 15% values to the colonials. The colonials were supposed to stay where they were, in their own countries, but to adopt our 15% value-system.

(In my work with teacher whistleblowers, I have noticed that many of them are also migrants from England, Scotland, Canada, America and New Zealand—the "old colonial" countries.)

When we were 18, we 15% girls all left our small town to go to colleges and universities all over England.

During my final year at teacher's college a union representative came to talk to us about "professional ethics." He warned us to "never put yourself in a position where you might be giving evidence against another teacher in court." I took the union representative's "professional ethic" very seriously. At that time I did not see the conflict between the union representative's "professional ethic" and my father's "tell the truth and shame the devil" moral value. It was many years before I realised that the union representative was actually telling us to turn a blind eye to child abuse.

During the next twenty years I worked as a teacher in England and New South Wales. I was never aware of any ethical issues. Many of the Greek and Italian teachers I worked with in Sydney came from small communities like my own and held similar small-town values.

Then in 1987 I came to work in Queensland and I found myself in a very different environment.





A Queensland schoolhouse

It was immediately obvious to me that many of the teachers I was meeting were afraid. They would urge me to “Go with the flow, go with the flow, don’t rock the boat!” But if you have no experience of corruption it is impossible to imagine how all-pervading and overwhelming it can be. I could not understand why the teachers were so afraid. So, when I noticed problems in schools, I continued to raise professional issues and to engage in professional discussion. I thought, as so many whistleblowers do, that I was just doing my job properly.

In late 1999 a child told me that his male teacher often hit him. The rest of the class sat and looked at me in silence, so it appeared to be true. I told the principal what the child had told me. The principal told me that the male teacher had a long history of warnings for this sort of abuse. But he made no written record of this male teacher’s abuse of the child.

A few weeks later, during an in-service on the department’s policies on child abuse, the principal asked us to discuss what we would do if a student told us that they were being abused by another teacher. An Aboriginal teacher’s aide turned to me and sneered very loudly, “Well, we all know what you would do, Robina!”

I was dumbfounded. The in-service was on child abuse and I was getting the message that we should report child abuse—but every other person in the room seemed to be getting the message that we should *not* report child abuse. And why would this Aboriginal woman, whom I had always liked, speak to me in such a nasty manner? I felt very confused. What was really wanted of Queensland teachers? What was the right thing to do?

I was working at two schools at this time. I had been given a grant to organise an Indonesian Day for three

schools. The funds had been banked by my second school and I could not get the second school office staff to pay the bills. A lot of my time and energy was being drained away dealing with phone calls from teachers’ aides who had not been paid. Then my first school office staff asked me if they could bring a JP to my home one evening to take a statement from me that they had paid my second school office some money and the second school office would not give them a receipt.

I suggested to a senior officer at my second school that there was potential for “something really bad to happen” in the school office because the office staff seemed to have such difficulty dealing with money.

I went to the District Office and asked for a transfer away from this second school because of this and other problems that were making it difficult for me to do my job properly—but I could not get a transfer. Queensland teachers can be trapped in a poor working environment for years. The principal knew I wanted a transfer and twice spoke to me very charmingly, assuring me that he would deal with some of the problems at the school.

One year later—towards the end of 2000—I spoke to a senior officer at this second school about the number of Year 7 children who were roaming about the school, disrupting the other classes. There would sometimes only be 6 or 11 children in the Grade 7 classrooms when I arrived for my specialist lesson—the other students were roaming about the school, disrupting the other classes. In addition to the disruption, I felt that this was a very risky situation—children could be abusing each other in the toilets, having accidents, being attacked by strangers, anything could be going on and nobody would know. The principal told me that several other teachers had raised this issue with him.

One term passed and the Grade 7 children continued to roam the school, so I discussed the situation with another senior officer at the school. This seemed to be the final straw. She told me that I was going to be put on Managing Unsatisfactory Performance (MUP).

The “payback” had begun.

A whistleblower’s workmates may be sympathetic—but they “have mortgages to pay” and are easily frightened into silence with threats and mysteries. My fellow teachers bravely “told the truth and shamed the devil” at first. They requested a formal meeting with the senior officer and told her that she was making a mistake, there was no problem with my teaching. But she told them that there were “secret other reasons” why it *had to be* done, and she told them repeatedly that they would get into “very serious trouble” if they discussed the situation with me.



A mortgage to pay

So my fellow teachers then became afraid to be seen talking to me.

I made a grievance about the senior officer’s abuse of the MUP process to “pay me back” for raising my concerns about the numbers of children missing from the Grade 7 classrooms.

The union advised me that the departmental grievance process did not work. They advised me that they had never known any grievance made by a Queensland teacher to be upheld. They advised me to “accept the things that cannot change, because teachers who fight it have breakdowns.”

But I did not believe that the system could possibly be so corrupt. I thought that if I just explained what was going on ... and so I began my 16-year whistleblowing journey through various Queensland public service departments, trying to find one Queensland public servant who had the integrity to “know about” and to deal with the abuse of the MUP and grievance processes to drive Queensland teachers into ill health and out of work.

First my grievance was sent back to the school to be investigated by one of the two officers involved. I was required to meet with the two officers at the school, so that one of the officers could read his “grievance investigation report.” During this meeting I was

threatened five separate times that “action would be taken against me” if I continued with my grievance.

At one point one of these senior officers made a new allegation concerning me. I said “But that isn’t true is it? It did not happen.” The officer replied “There is no such thing as truth, Robina. There is just your perception!” and both senior officers roared with laughter.

I was dumbfounded again. It was obvious to me that these senior officers were totally confident that they were going to “get away with it.”

I made a disclosure to the Director-General of Education and the Minister of Education concerning the abuse of the MUP and grievance processes to drive Queensland teachers into ill health and out of work.

I also made a disclosure to Peter Beattie, then Labor premier of Queensland, about certain political conflicts of interest that seemed to be affecting the investigation into my grievance.

My disclosure was sent back down to a senior officer in the District Office who had been advising the senior officers at my school how to put me on MUP. This District officer wrote a briefing for the Minister in which she did not mention (a) her own conflict of interest in the situation or (b) the serious conflict of interest on political grounds. She advised the Minister (and the Premier, and the Director-General) that my disclosure had been found to be unsubstantiated and to declare my disclosure “finalised” and not to respond to any more of my letters or emails.

So Peter Beattie (with his big, swirly signature) and the senior public servants all signed an agreement that nobody would respond to my letters and emails.

A few days later a number of documents were released to me under Freedom of Information. I immediately realised that many of my departmental records had been significantly falsified. I emailed the department to advise them that my official records had been falsified. I asked “Who should I report this to?” Nobody replied—because every public servant in Queensland had been instructed not to respond to my emails.

From that point onwards my letters

and emails seem to have been simply deleted. When I made FOI applications to find out what was happening to my emails, a new decision was made that they should be stored on a departmental computer without being read.

These Queensland public servants, many of them qualified solicitors and barristers, did not feel any obligation to “tell the truth and shame the devil.” Quite the contrary, the public servants seemed to have developed a very simple process that enabled them to entirely disregard the truth. The public servants called this process “natural justice.”

### HONESTY IS A COSTLY THING. DON'T EXPECT IT FROM CHEAP PEOPLE

So a whistleblower will find themselves surrounded (a) by fellow workers who have been threatened and mystified into silence and (b) by public servants who have been trained to disregard the truth.

But how do the rest of the community regard whistleblowers?

I realise now that, in addition to the public servants and my workmates, there are other groups in our community who hold values very different from those of a 15% whistleblower.

The response of the Aboriginal teachers’ aide to my own disclosure (and what I have read about the values of Aboriginal communities) suggests to me that Aboriginal Australians do not approve of people who blow the whistle on wrongdoing, particularly on child abuse.

My Asian friends do not seem to share my own attitude to facts. And they seem to be more used to living with corruption.

And some young Australians seem to take a pride in telling whopping great “barrow boy” lies.

But I was quite shocked recently to realise that the French (such a sophisticated society—and just over the water from England!) also view whistleblowers very negatively, apparently because of all the informing on neighbors that went on during World War II. The French consider learning to keep

your lips sealed to be a “life skill.” They have no reverence for telling the truth at any cost. “You have to calculate the risks,” one French father explains. “If the advantage is not to do anything, (my son) should do nothing. I want my son to analyse things.” (Pamela Druckerman, *Bringing Up Bébé*, Penguin, 2014, pp. 251–252)



And when I was travelling back from Dubai earlier this year, as we came into land at Melbourne, before the “seatbelts” sign had been switched off, two large African men stood up at the back of the plane and walked right to the front of the plane. The much smaller male flight attendant signalled to them to sit down, but they ignored him and remained standing at the front of the plane. I found their behaviour really shocking. But then I realised that these men had not learned to value “having good manners”, following instructions or “doing the right thing.” Their life experience had taught them that people who follow the rules will die. Increasing numbers of the people in our community will have had this sort of life experience. And they will have large families. And they will teach their children the “life skills” that they have learned, just as my own father taught me his own “life skills.” So many of these (very different) “life skills” seem to have been developed during wars.

So what to make of all of this?

Many members of WBA are older

people. Are we dying out? Are we the victims of a very unfortunate, clunky 15% upbringing, trapped in the values of another time and another place? Will we become the dinosaurs of our age? Will people brush over our stories in *The Whistle* in years to come and say to each other, “Ah yes, the whistleblowers, now weren’t they a curious group of people?”

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## **Gabor Szathmari** **“Help!** **I am an investigative** **journalist in 2017”**

**Cynthia’s introduction** (Information sourced from websites for Gabor, the CryptoParty and EFA)

Gabor is an information security freelancer in his professional life. He is the founder of “Privacy for Journalists” (<https://privacyforjournalists.org.au>), a website helping journalists protect their information sources. In his free time, he is busy with organising the monthly CryptoParty privacy workshops in Sydney. Gabor is a passionate privacy, open government and free speech advocate.

Gabor is also the president of CryptoAUSTRALIA, whose vision is a society where everyone in Australia has the necessary skills to defend their privacy. Its mission is to inform and educate ordinary citizens and professionals on privacy and information security.

Gabor is representing CryptoAUSTRALIA today and his talk focuses on only one of his passions, “Privacy for Journalists.”



Gabor Szathmari

### **Gabor’s talk** (notes by Brian)

Gabor asked everyone with a smartphone to put up their hands. For those with hands up, 21 agencies will be able to use metadata to determine that you were attending the WBA AGM.

Investigative journalists reveal many things and are vital to an open society. They rely on information sources. Some obstacles they face include opaque government systems and sources being afraid to speak out. Some journalists are imprisoned for doing their jobs.

There are abuses. The Australian Federal Police admitted seeking access to a *Guardian* reporter’s metadata without a warrant. *The Intercept* revealed that secret rules make it pretty easy for the FBI to spy on journalists.

There is a long history of interception of messages, including through the UK postal service in the 1700s (“Black Chambers”), telegraph in the mid 1800s, on to today’s electronic data surveillance of text messages, phone calls, emails and much else.

What to do? One option is encryption of sensitive data (documents, text messages, voice calls, etc.) in transit and at rest. There are all sorts of programs available for encrypting data in transit. When texting someone or making a call, use Signal. For encrypting emails, use PGP. For video calls, use Wire. For encrypting data at rest, you can use BitLocker (for Windows), FileVault (for Mac) and LUKS (for Linux). However, these programs are far from enough as they miss two important things: metadata retention and state-sponsored hacking.

Metadata of phone and internet activity is kept for two years in Australia, and can be used to map social connections.

Government hacking, on the other hand, is concerned with hacking into the phones and laptops of ordinary citizens. For example, the Tailored Access Operations (TAO) intelligence-gathering unit in the United States sets up backdoors on routers and laptops purchased online. Alternatively, phishing and other exploitation techniques are used against the targets, as revealed by Edward Snowden in 2013 (see “FOXACID”).

So what can an investigative journalist do, in light of metadata retention and hacking? Besides encryption, it is important to write and communicate in a secure environment, hide the metadata, compartmentalise your work, and solve the first-contact problem. So use the Tails or Whonix operating system (for anonymity) and the Qubes OS (for security). Journalists should combine both worlds with the Qubes OS and Whonix. To hide metadata, use Ricochet IM for chat and OnionShare for file exchange.

Compartmentalisation of work limits the damage from being hacked. This involves using separate laptops for research and communication, one email mailbox and USB drive per source. A unique password on any website is also a good idea so that if one password is illicitly obtained, it can’t be able to be used to break into your other accounts on LinkedIn, Google, Facebook, etc.



The first-contact problem is this: as soon as a whistleblower or indeed anyone makes electronic contact with a journalist, their identity may be compromised via metadata, namely a record of the electronic connection between the devices used by the whistleblower and the journalist. This problem can be addressed by using anonymous uploading systems such as SecureDrop and GlobalLeaks.

Journalists should leave their phones at home, because the phones are spying machines. The safest tool of all is pen and paper, which can hardly be hacked.

In summary, surveillance is now very sophisticated. A journalist can be linked to an informant via metadata and data mining technologies, and phones and laptops are vulnerable to hacking. To resist, use encryption, a secure operating system, pen and paper, hide metadata, compartmental-



ise, leave your smartphone at home and solve the first-contact problem.

Gabor's slides are available on his blog at <https://blog.gaborszathmari.me/2016/11/21/help-i-am-an-investigative-journalist-in-2017/>

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## David Vaile Communications risk management for whistleblowers

**Cynthia's introduction** (Information from the UNSW website)

In 2002, David became executive director of the Cyberspace Law and Policy Centre, and in 2013 co-convenor of the new Cyberspace Law and Policy Community. He has coordinated Centre support for research projects such as unlocking intellectual property, interpreting privacy principles and regulating online investing, including input into public policy processes; presents for the community at conferences and fora; and runs intern programs.

His background in law, information technology (IT) and communications includes work in areas such as electronic health records software, appellate legal research, data protection, public interest and test case litigation, co-founding the virtual community for NGO lawyers and advocates, online professional education and governance of IT risks. More recently David's interest in online regulation has resulted in collaboration with NSW Privacy Commissioner's Office, Judicial College of Victoria, and the Licensing Executives Society of Australia, as well as a range of consumer and non-government bodies.

His research interests include e-security and IT risk management, personal safety online, digital content regulation, privacy and data protection, communications confidentiality and personal information security, jurisdictional issues, copyright and digital IP, e-health records and user-centred design.

**David's talk** (notes by Brian)

How should whistleblowers manage the risk that their communications will be compromised? David emphasised

that he is not an expert in any of the areas covered, but he does have a background in IT, law, privacy, IT security and risk management. He draws on public sources and common sense. He doesn't feel well informed enough to use highly technical means. He prefers to keep it simple.



David Vaile

The legal environment for whistleblowing is not favourable. Internationally, the Obama administration has used the Espionage Act against whistleblowers more than any previous administration. In Australia, there is no legal right to privacy or free speech. Both the Labor Party and the Liberal Party supported the data retention act in the Senate, while all other parties (from Greens to Palmer) opposed it. Meanwhile, there is a proliferation of cybercrimes that could be investigated or prosecuted, but seldom are. Some jurisdictions—Victoria, ACT—recognise a right to anonymity, but this wouldn't mean much if criminal sanctions were involved.

The IT security environment for whistleblowers is not favourable. Intruders can get in despite the best protection; even security agencies are vulnerable. There are massive breaches of security. In the US, cyberspace is being militarised: in the face of security intrusions, the response is to be counterattack rather than better security. The Internet has become a machine to collection of evidence. It is impossible to prevent intrusions or exfiltrations. (Exfiltration is collecting data and taking it elsewhere.)

The risk environment for whistleblowers is challenging. Because no method is perfect, then in a situation of great uncertainty, ambiguity and com-

plexity, it is often better to use simple methods. The knowledge needed for high tech analysis is too scarce. A whistleblower should consider their tolerance or appetite for risk. The implication is not to try to be clever but rather stick with familiar techniques. Another implication is not to try to be brave unless you really want to be: don't reveal your identity unless you need to—making the information public may be enough, and reduces risk. Assume the unexpected and unintended will happen.

A large proportion of US mathematicians is employed by the National Security Agency to break encryption or to develop encryption with backdoors. In Russia, the collapse of the Soviet economy led to many skilled IT people being available for hire.

Whistleblowers should think of their aims. A key decision is whether to be identified. There's no need unless you want to be, or if being public makes you safer, because of the risk of serious reprisals. Going public sometimes can make the information more credible. Staying sane is another aim.

Whistleblowers need to decide who they want to deal with: politicians, journalists and activist groups are possibilities. The recipient's interests and motives need to be probed, and their capacity to protect you.

What channel should be used? Pen and paper may be safer than digital communications, which are risky because of metadata retention, digital device location (via GPS, WiFi and phone tower triangulation) and so forth. There are so many opportunities for identifying digital devices that it might be better to use the post. It's safer to use ordinary paper, toner and printer; use a post box out of the area, and not list a return address. Ensure that the documents, the stationery or anything else do not reveal your identity.

Which are the greatest threats to your privacy: governments (being over-zealous), business (being over-optimistic), criminals (hacking)—or your friends (Facebook or otherwise)?

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## Whistleblowers Australia Annual General Meeting

20th November 2016  
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, Jeannie Berger, Brian Martin, Feliks Perera, Robina Cosser, Geoff Turner, Katrina McLean, Michael Cole, Lesley Killen, Graham Schorer, Alan Smith, Trent Liang, Ken Smith, Gerry Dempsey, Karen Burgess, Ross Sullivan, Tim Morrison, Nikhil Shah, Steven Hall, Lucie Litchfield.

3. Apologies: Lynn Simpson, Jane Cole, Margaret Banas, Margaret Love, Stacey Higgins, Toni Hoffman, Harry Albani, Rhonda Aubert, Ken Carroll, Carol Devine, Con Dassos, Adam Hadad, Debbie Locke, Tom Lonsdale, Greg McMahon, Stephen McNally, Gail Mesinga, Dennis Morgan, Karl Pelowski, John Stace, Bob Steele, Rob Tierney, Jim Page.

### 4. Previous Minutes, AGM 2015

Cynthia Kardell referred to copies of the draft minutes, published in the January 2016 edition of *The Whistle*.

Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2015 AGM.

Proposed: Feliks Perera

Seconded: Lesley Killen

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: Michael Cole

Treasurer: Feliks Perera

Secretary: Jeannie Berger

National Director: Margaret Love

### 5(3) Ordinary committee members (6 positions)

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

Robina Cosser

Stacey Higgins

Toni Hoffman

Katrina McLean

Lynn Simpson

Geoff Turner

President Cynthia Kardell thanked all of the committee for its good work, and provided two examples of how WBA has both maintained and extended our capacity in the last year. Toni Hoffman continues to field health-related inquiries many years after blowing the whistle in the Jayant Patel or "Doctor Death" scandal at the Bundaberg Hospital. Stacey Higgins continues to manage our Facebook page, but she is now also receiving inquiries about freedom of information laws after giving a talk at last year's conference.



Cynthia Kardell

Cynthia singled out our former junior vice president and schools contact, Robina Cosser, who has officially moved to the position of an ordinary committee member today, saying

I have always admired the creative and productive energy of teachers and Robina is no exception. Since I've known her she has always looked to see what can be done to further the aims of WBA and she's just pulled up her sleeves and got it done, but always with an eye to creating something that will have a lasting effect—like her websites, which I'm sure will endure and even grow. And while by her own account it has taken 16 years for her to be able to shrug off her regrets about the Queensland Education Department's failures, let it be said that it has never stopped her from helping others to realise their aims. I understand Robina's reasons for wanting to scale back her commitments to WBA and I'm thankful for her friendship and hard work, but I'm sad, because I'll miss her. I wish you well, Robbie. I know we all do.

### 6. Public Officer

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

6(1) 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: Feliks Perera

Seconded: Lesley Killen

Passed

### 7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June

2016. A motion was put forward to accept the financial statement.

Moved: Lesley Killen

Seconded: Michael Cole

Passed

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

Once again, it is my pleasure to present to you the accounts for the financial year ending to 30<sup>th</sup> June 2016.

During this financial year, our expenditure exceeded the income by \$2040.84

This is due to the increased costs of printing and postage of *The Whistle*, and the subsidy for the very successful November 2015 Conference.

The membership has benefitted much from these expenditures. Our investment with the National Australia Bank has also delivered smaller dividends owing to the current low bank interest rate. The total donations for the year amounted to \$1090.00 and I gratefully acknowledge the generosity of our members.



For WBA, the money keeps flowing.

Our membership has been steady during this financial year, and any efforts to bring in more new members are always welcome.

I want to record my sincere thanks to the members of the National Committee for their cooperation and confidence in me. I also want to record my thanks to the members for their constant support and cooperation in our struggle to take care of whistleblowers.

## **ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2016**

### **INCOME**

SUBSCRIPTIONS	\$3200.00
DONATIONS	\$1090.00
INTEREST ON FIXED DEPOSIT	\$202.46
BANK DEPOSIT	\$0.93
<b>TOTAL INCOME</b>	<b>\$4493.39</b>

### **EXPENDITURE**

WHISTLE PRODUCTION	\$2,803.91
SUBSIDY FOR CONFERENCE	\$1,967.90
RETURN TO BRANCHES	\$250.00
ANNUAL RETURN FEE	\$53.00
PAY PAL COSTS	\$3.90
<b>TOTAL EXPENSES</b>	<b>\$6534.23</b>

EXCESS OF EXPENDITURE OVER INCOME  
-----  
-(\$2040.84)

## **BALANCE SHEET, 30 JUNE 2016**

ACCUMULATED FUND BROUGHT FORWARD FROM 2015	\$23161.16
LESS EXPENDITURE OVER INCOME	-\$2040.84
<b>TOTAL</b>	<b>\$21120.32</b>

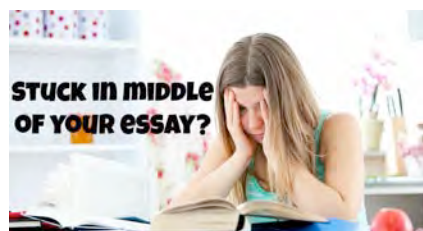
FIXED DEPOSIT WITH NATIONAL BANK,	\$13470.70
BALANCE OF CURRENT ACCOUNT	\$7049.62
DEPOSIT FOR 2016 CONFERENCE	\$600.00

**TOTAL** \$21120.32

## **8. Other Reports**

### **8.(1) Cynthia Kardell, President**

The past year has been a little less busy than the previous year although the shift to a 50/50 split between public and private whistleblowers has remained constant. University students are still wanting help with their assignments and people still see us as a source of good information.



Don't despair: Cynthia can help.

I've done the usual interviews, mostly with the new online media outlets or radio but inevitably a ten-minute interview still becomes a one-liner.

This year the media has been spoilt for choice what with big business fraud being exposed in the four big banks, IOOF, 7-Eleven and more recently Appco and Caltex among others. And internationally in the wake of the Panama Papers, Swiss Leaks and Lux-Leaks it seems whistleblowers are leaking like sieves, which is wonderful to see, because protection is still largely hard to come by unless you're anonymous or willing to swap countries like Ed Snowden and Julian Assange.

I wrote to the NSW DPP to ask whether the disastrous decision in the Murray Kear case could be appealed, with no answer. You'll recall the NSW ICAC found SES Commissioner Murray Kear had corruptly sacked whistleblower Tara McCarthy and it seemed a trial would probably follow. But it wasn't to be. On my analysis of the decision, the judge didn't understand the evidence, because Tara didn't have any problems with the wrongdoer or her boss before she blew the whistle. And afterwards, her boss took every opportunity to exploit her circumstances to his advantage: it was a deliberate beat-up.

I followed up with a letter to NSW Attorney-General Gabrielle Upton with the same result. Fortunately Greens MLC David Shoebridge raised the Kear decision in the ICAC inquiry about the quality of the evidence it passed on to the DPP and it seems the DPP just didn't do a good job. It didn't have its heart in it and, as it happens, this is Tara's opinion. We'll never know. All we can do is look to the future, so David Shoebridge MLC has offered to look at trying to amend the act to make a future conviction more certain in similar circumstances.

At least Ziggy Switkowski, CEO of NBN Co, replied to my letter even if it was to a question I didn't ask. I wrote regarding his complaint to the Australian Federal Police about the leak to the media about blow-outs and the poor business decisions Malcolm Turnbull made when he was the minister. I wanted to know whether the AFP was wrongly doing his bidding



when it agreed that his employee could photograph documents during the AFP raid on Labor senator Stephen Conroy's office and copy them to the NBN Co executives. The documents are now the subject of a claim for parliamentary privilege, which a Senate committee will decide. To date the whistleblower hasn't been identified and I hope it stays that way. Fingers crossed Labor got it right this time.



I made submissions to the Federal and Victorian parliamentary reviews of the relevant whistleblower protection acts (although it is fairer to describe them as "protection from whistleblowers" acts for all the good they do to protect whistleblowers or get the wrongdoing investigated). The submissions are available on the parliamentary web-sites.



**Crime and Corruption  
Commission**

I also made a submission to the Queensland review of the Crime and Corruption Commission (CCC) policy that allows an allegation of corrupt conduct to be made public ahead of a decision to investigate. It was prompted by its finding that allegations made public in the lead-up to a state election that (then) premier Campbell Newman may have failed to disclose certain financial and non-financial interests while he was the Lord Mayor of Brisbane were untrue. If there is a change, it will put the possible loss of reputation ahead of the public's right

to know and allow the CCC to prosecute a whistleblower if an allegation becomes public ahead of a finding.

This would be a backward step, like the NSW government's legislative change this week to stop the ICAC from conducting public inquiries or making public findings of corrupt conduct unless a majority of three commissioners agrees. The last is a part of a so-called restructure that will require the present commissioner, Megan Latham, to re-apply for her job two years out from the end of her term.

This came about because the ICAC planned to make public findings that the 11 Liberal MPs who took illegal donations prior to the 2011 election were corrupt and because of the media frenzy around allegations that public prosecutor Margaret Cunneen SC had allegedly advised her son's girlfriend to feign chest pain to avoid the ambulance driver taking a blood sample after a traffic accident. The ambo rushed her off to hospital. The blood test, which was done at the hospital, was negative. The ICAC interviewed Cunneen in camera before deciding to have a public inquiry. Cunneen cried foul and took ICAC to court and won. The Government changed the law to accommodate the court's decision, namely to ensure that the DPP's prosecution of Labor MP Eddie Obeid went ahead and that the ICAC could not make a public finding of corruption about the 11 Liberal MPs.

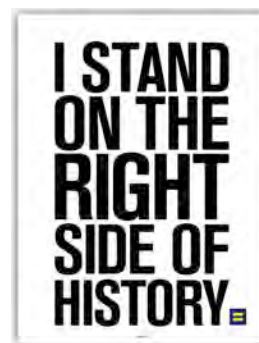
The question is, should the public know that an investigation by the CCC is underway and when should it be public? I argue that secrecy only ever serves powerful self interests: a copy of my submission is available on the CCC's website.

I've kept in contact with the federal Attorney-General's department since the Gillard government decided to investigate the possibility of a US-style false claims act and it seems the Labor and cross bench push for a banking and financial services royal commission has given it unexpected legs. Only recently, Jordan Thomas, a lawyer from the US who works in the area, spoke on the topic at a media conference, met up with Fairfax executives and later with a group of government, opposition and cross bench members to discuss adapting its Securities Ex-

change Commission (SEC) legislation to our purpose.

If we do see a false claims act legislated in this country I suspect the public profile of a whistleblower will get a bit of a lift, from grudging to well and truly deserving respect. It can only help even if it's long overdue.

Finally, I want to thank all of you who gave a whistleblower a hand up during the year when they needed it most and for staying on message, because it is clear we're on the right side of history!



**8.(2) Jeannie Berger**, Secretary  
Memberships are steady. This year we have 135 members. Cynthia continues to send out *The Whistle* to a larger group of people other than financial members. All up approximately 200 *Whistles* get sent out. The primary goal is to spread the word.

**8.(3) Geoff Turner**, Communications  
I continue to maintain and update the WBA website. Our email system has not changed. Emails sent to our main contact address go to Cynthia and myself. As reported last year, we had an issue with a fraudulent website using Whistleblowers Australia's name. We are happy to announce it has now vanished.

**8.(4) Brian Martin**, International liaison and editor of *The Whistle*.

I periodically keep in touch with whistleblowers and whistleblower organisations in other countries, for example with Guido Strack from Whistleblowing Network Germany.

*The Whistle* continues to be published four times a year. Members are encouraged to submit a story. Don't be shy! There are usually four sections to *The Whistle*: page 1, articles/reviews, media watch and last page. In January there's also a report

on the conference and the draft AGM minutes.

8.(5) **Robina Cosser**, Schools contact  
After sixteen years, I think I am moving towards the end of my whistleblowing journey.

When I first blew the whistle I was sure there would be somebody in the Queensland public service who was not corrupt, and if I could only find that person, my problem would be resolved. But I never did manage to find that person.



An honest member of the Queensland public service

So, for me, the most interesting development the past year was this quote from Direct Interference by Chris Mitchell, former editor of the *Courier-Mail*, in *The Australian* on 20 August 2016.

Back up 18 years and (Noel) Pearson was a columnist for me at Brisbane's *The Courier-Mail*. He did not know the then Premier, Peter Beattie, and wanted to talk to the Labor leader about his ideas on welfare reform.

I introduced them. We listened to Pearson for more than an hour. Beattie was mesmerised.

His first response was that he wanted to help. His second shows a wisdom that probably explains the success of his long term as premier. Beattie wanted Pearson to repeat everything he had just said for the director-general of health right away.

"Because, mate, no matter how much I or the media support you, it is the bureaucracy that will under-

mine this if it is not onside. They will kill any reform they see as against their interests," Beattie said.

This supported the idea that I discussed at the conference last year: the senior public service is our problem. The senior public service in Australia is failing whistleblowers. It is failing the Australian people.

I spoke last year about the poor quality of people who are being promoted to the senior ranks of the Australian public service. It is not acceptable that, in Australia, a person with a long prison record, a prison record that would bar them from ever becoming a classroom teacher, is able to spring rapidly through the ranks of the public service and to become a director-general of education.

These dubiously-promoted senior public servants are then able to give each other references, interview and promote each other.

The types of people being promoted are very charming, and, I would strongly suspect, already fully aware of the wrongdoing that we whistleblowers are struggling so hard to disclose.

But, as I have discussed earlier at the conference, Australian public service policies and processes seem to have been "set up" (over many, many years) to prevent these senior public servants from ever *officially* "knowing" anything or ever needing to actually *do* anything about wrongdoing except to be very charming and to produce bland reassurances.

Teacher housing, for example, has always put Queensland teachers working in remote communities at risk of harm.

In September 2008 Labor Member for Cook Jason O'Brien said, "Quite frankly, some of the housing teachers are expected to live in is in such poor condition you nearly want to cry."

But teachers working at Aurukun continued to live in insecure accommodation till 2016. It was only after the situation had developed into a crisis, and the Aurukun teachers had to be evacuated to Cairns for their safety—and after the teacher housing problems had become very public—that an effort was made to improve the safety and security of Aurukun teacher housing.

Electronic security systems were installed, security lighting was im-

proved, fencing was improved and the teachers were given personal duress alarms, we are told. A new Aurukun teacher housing precinct will be built, we are told. Let us hope that these are more than bland reassurances.

There have now been at least 663,000 views of my web sites for teachers. Sometimes people spend hours reading what I have written. Even when I am relaxing overseas, my website continues to expose the systemic problems 24/7.

After sixteen years, I can honestly say that I feel I have made my point. I might not have brought about a great deal of change, but I have "fought the good fight."

Now I am going to hand over to a new WBA Junior Vice President who has my full confidence and support.

I would like to thank Cynthia most sincerely for her listening ear, her understanding and her very valuable advice, and Brian for his insight—such valuable insight—into whistleblowing, over so many years. I will miss you both greatly.

I will miss all of the friends that I have met each year at the conferences. You have been a huge support to me.

My good wishes go with you on your own whistleblowing journey.



A whistleblowing journey can take you to exceptional places.

8.(7) Agenda items and motions  
(previously notified)  
None put forward.

8.(7i) AGM 2017 in Sydney  
8.(7ii) Priorities in 2017: none discussed.

9. AGM closed 12:50PM

### Risk but no reward for Australian whistleblowers

Nick McKenzie and Richard Baker  
*Sydney Morning Herald*  
30 December 2016, pp. 6–7

A FEW WEEKS AGO, Brian Hood, the whistleblower who exposed an alleged national bribery scandal linked to the Reserve Bank, put his Melbourne house on the market.

Hood is an intense, quietly spoken ex-VFL umpire and former executive. Now—thanks to his speaking out—he is unemployed.

He is still waiting to testify in the Australian-first case he helped launch—a prosecution of two companies and their former executives for bribing foreign officials.



Brian Hood

While he has been waiting, he has been doing the maths. Hence his decision to sell his home. Hood has had more than 30 interviews with prospective employers, but has failed to resurrect his career. His professional life nosedived after he was pushed out of his role as the chief financial officer at the RBA-owned Note Printing Australia as a result of speaking out internally about the alleged corruption.

Hood is the embodiment of ASIC chief Greg Medcraft's warning that career oblivion often follows corporate whistleblowing.

Hood views with scepticism last week's announcement by Financial Services Minister Kelly O'Dwyer that the government is seeking public submissions about improving Australia's corporate and tax-cheat whistleblower regime, including the possibility of paying rewards and the toughening of penalties for companies that persecute whistleblowers.

"Change is desperately needed, but

that has been obvious for years," he says. "I just hope [Malcolm] Turnbull acts on it."

For anyone who doubts the potential repercussions of speaking out in an organisation, consider the story of another well-known Australian whistleblower, former Football Federation Australia corporate affairs manager Bonita Mersiades.

She blew the whistle on the FFA's use of dubious and overpaid overseas consultants as it sought in 2010 to win the backing of shonky, powerful FIFA officials for the right to host the World Cup.

Like Hood, Mersiades lost her job. She was interviewed about Australia's consultants and FIFA's *modus operandi* by law enforcement officials in Australia and overseas, and contributed to significant change. But beyond fulfilling a civic duty, the personal rewards for having the courage to speak out have been few, while the detrimental emotional and career impacts have been immense.

"What followed in the days and weeks after I was sacked was an institutional and systemic discrediting of me," Mersiades wrote of her experience.

"There is not a lot you can do about being trashed, unless you have enough wealth and emotional energy to take on everyone legally. You just have to let it wash over you. You spend a bit of time licking your wounds. You go over conversations in your head. What if I had said this? What if I had done that?"

Hood's and Mersiades' whistleblowing stories—and the dozens like them that have been the lifeblood of our work as reporters over 15 years—contrast dramatically with the case of a BHP Billiton insider whose story Fairfax Media revealed earlier this year.

The US government paid this person \$5 million for sharing with it information that allowed authorities to extract a \$25 million settlement (but no admission of liability) from the mining giant, following a probe into a gifts and hospitality program targeting foreign officials in countries where BHP Billiton was doing business. If you think this was easy money for the

whistleblower, think again.

The now former executive not only lost their job but was subjected to serious threats that may have been linked to figures in the country in which BHP Billiton was doing business. (There is no suggestion BHP Billiton was involved or knew of these threats.) Sources aware of the case say the insider had to go on the run. The whistleblower's career was ruined.

It is unlikely Australia will follow the US path in handsomely rewarding corporate and tax whistleblowers. Given the comparable legal system and culture, it is far more likely Australia will follow the British lead. The UK system involves no payments to whistleblowers, but has far greater requirements for companies to encourage and protect them.

The Commonwealth legal take on rewarding whistleblowers is summed up neatly by the head of Britain's Serious Fraud Office, David Green, QC.

"In this country and most of the Commonwealth, it is citizens' duty [to blow the whistle]," he says. "To incentivise it seems slightly distasteful."

In contrast, Mary Jo White, the outgoing chairwoman of the powerful US Securities Exchange Commission (which paid the BHP insider), has described the advent of the US whistleblower reward and protection program in 2011 as a "game changer."

While the number of US whistleblowers who have shared \$111 million in rewards is still small—just 34—a top US justice department official says the regime "scares the shit out of companies" that may otherwise want to keep their soiled whites in-house.

It's a sentiment O'Dwyer should keep in mind, especially given there appears no end in sight in Australia to corporate offshore payment scandals (including the recent expose of Rio Tinto's multimillion-dollar payment to a mate of Guinea's President to help secure mining rights), financial services misconduct and pressure to crack down on tax cheats.

Even if very few bounties are ever paid, the fact they are available should drive Australian companies to do more to encourage and protect whistleblowing staff.



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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/>

### Members of the national committee

[http://www.bmartin.cc/dissent/contacts/au\\_wba/committee.html](http://www.bmartin.cc/dissent/contacts/au_wba/committee.html)



Not a WBA contact

**New South Wales 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/>

**Queensland contact** Feliks Perera, phone 07 5448 8218,  
[feliksfrommarcoola@gmail.com](mailto:feliksfrommarcoola@gmail.com)

**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)

### Whistle

Editor: Brian Martin, [bmartin@uow.edu.au](mailto:bmartin@uow.edu.au)

Phones 02 4221 3763, 02 4228 7860

Address: PO Box U129, Wollongong NSW 2500

Associate editor: Don Eldridge

Thanks to Cynthia Kardell for proofreading.

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## Editor's comment

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Besides the front and back pages, *The Whistle* usually has two main sections: articles and media watch. The articles section includes contributions specially for *The Whistle*, and can include personal stories, poems, reviews and commentary of all sorts. If you want to see your name in print, then write something. (You can also submit items and request use of a pseudonym.)

I am most interested in items that help readers better understand situations and that give guidance about what to do. A personal story can be effective, especially if it includes an assessment of what worked or helped and what did not.

The media watch section can include anything published elsewhere, for example newspaper articles and passages from books. A huge amount is being published about whistleblowing, so it's a matter of selecting items that will interest readers. Typically I like to include some Australian stories and some from other countries, to give a broad perspective. I appreciate all those who send me copies of articles or URLs.

This issue is different because it includes reports from the annual conference and the draft minutes of the AGM.

Then there are graphics. I welcome suggestions for pictures and cartoons. You can also produce your own!



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## 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)*