

WB

JUNE 1995

WHISTLEBLOWERS AUSTRALIA INCORPORATED NSW BRANCH

PO Box 269, Gladesville, NSW.2111

"All it needs for evil to prosper is for people of goodwill to do nothing." Edmund Burke

FROM THE NSW PRESIDENT

Hi Everyone,

The financial year is coming to a close. You might want to ask yourself, "what have I achieved this last year?". Are you still hanging onto what happened to you in the past or are you looking ahead to see how you can improve your life? We only have a short trip on this earth and sometimes things happen that are out of our control. If you blew the whistle and you felt you were unfairly treated, you have my greatest sympathy. Still, WBs also need to move away from feelings of resentment against those people that "ruined" their lives, otherwise they risk even more suffering in the long run. Don't think that I am saying "give up" or that anyone should stop trying to seek justice. On the contrary, I am saying get well, improve your health, clear your mind of the cobwebs and work perhaps more objectively and constructively on plans how to ensure that the law is properly enforced. Even if you don't get any benefit, the work you do might stop others having to go through what you have been through. Through the WBA, you have access to a supporting group second to none. The WBA is constrained only by our, hopefully temporary, lack of funding and resources. You have access to a network of people who genuinely know and understand what you have gone through. Communicating with other WBs can give you a reference point by which to maintain your sanity, and this process is increas-

ingly getting information to people which they have been using to good effect. The benefit of people's experience has been used by others who have then avoided making certain mistakes.

It horrifies me that some WBs, who were earning good salaries while employed in highly responsible jobs, have found themselves virtually unemployable after they have been forced out of their job. Ill health has meant that many have never worked again. On the positive front, many WBs, despite realising that they have been victims of a terrible failing in society, have moved successfully on from that situation, feeling much stronger as a result, more empowered, and satisfied that they have a clean conscience. They have effectively avoided, or moved on from, allowing themselves to feel like a victim. Many WBs, even if their bank account does not indicate success as it is commonly measured today, have walked away knowing they really are richer than their colleagues who chose not to speak out, and who have a different value system.

Realising that you can help others by passing on what you have learned to prospective or current WBs is very empowering. No-one controls how you feel or what you think, but you. Nothing can change what has happened, but all WBs have a tremendous wealth of experience which, if passed on to others, will change the future. Every single WB has something unique to contribute to the WBA.

Don't forget that every member of the

MEETING TIMES

Sharing and Caring meetings every Tuesday, from 7.00 p.m.

NOTE: CHANGED FROM MONDAYS.

The next Branch General Meeting is on Sunday, 2 July at 1.30 p.m.

The next Branch Committee meeting is on Sunday, 2 July at 10.30 a.m.

The National Annual General Meeting is on 29 July at 2.00 p.m.

All meetings at the Presbyterian Church Hall, Campbell Street, Balmain.

The Whistle

Newsletter of the NSW Branch of Whistleblowers Australia Inc.

WBA, and all ethical human beings, are on your side!

In the case of the two police WBs mentioned last month, the drug charges which had been laid against them were dismissed by the Magistrate on 24 May. One of them had previously blown the whistle on the "Frenchs Forest missing drugs affair" in 1991 and 1992. They both claimed that, due to the reporting of alleged corrupt activities of police and drug dealers they had been set up.

Assault charges brought against another WB were also dismissed on the same day. These charges were brought against the WB nine months after the WB had complained to the police that he had been assaulted! He claimed that his complaint was never properly investigated by the police in the first place. It has cost the WB a fortune to prove his innocence, as legal aid was not available.

It really makes you wonder at the lack of originality of the charges which are brought against WBs by the bureaucracy, in their attempts to crush the WB.

In respect of both these cases the WBA wonders if charges will be brought against anyone for malicious prosecution.

Dr Jean Lennane is due to give evidence as a psychiatrist with expertise on whistleblowing at a very serious case coming up shortly in South Australia. We wish success both to her and to the WB in-

olved.

I was also pleased to hear that, after listening to Geoff Marr, who has represented himself in court on a number of occasions, another WB was prompted to do the same, and he did so fairly successfully. Given the number of WBs currently involved with taking action against solicitors who were meant to be acting on their behalf, but who subsequently failed to act in their best interests, perhaps the way of the future is for the WBA to encourage more people to take action on their own behalf. Apart from saving a fortune in legal costs, the person best equipped and informed to ensure your case is resolved, even in court, may well be you! You are the only person you can trust 100%, and it is never wise to totally hand over the reins to anyone else.

I hope that WBs will continue to provide their support for other WBs who have court cases and other forms of inquiry coming up in the next few months. Dates and times can be obtained by calling me on 0412 972 900.

Finally I would like to thank K. Mortenson and I. Brown for providing us with the information from the Internet that we requested in last month's Newsletter. Thanks also to B. Hamilton for all the articles he has sent in.

See you at the next meeting.

Regards,

BOB AMATO
NSW President

Whistleblowers National Committee Members

National President	Jean Lennane
Senior Vice President	Bill Toomer
Junior Vice President	Bob Amato
National Director	Jack King
National Secretary	Shane Carroll
National Treasurer	Vince Neary
Legislation Co-ordinator	Greg McMahon

NSW Branch Committee members

President	Bob Amato	0412 972 900
Secretary	Jim Regan	016 288 920
Treasurer	Bob Hunter	02 427 6261
Media	Charles Willock	02 411 4420
Newsletter	Lesley Pinson	02 365 1723

Any member interested in joining or assisting the committee would be very welcome. □

News from the Royal Commission

By EVAN WHITTON

On May 29, I gave the following letter to Peter Symonds, the media liaison officer for the Wood Royal Commission on systemic or entrenched corruption in the NSW Police Service:

"Dear Mr Symonds,
The editor of *The Whistle*, organ of the NSW Branch of the Whistleblowers' Association Australia Incorporated, has asked me to write a piece on the Royal Commission. I attach a copy of the Association's survey of informants' reaction to the ICAC. You will see on p.3 that they rated the ICAC "very bad" or worse in 95 percent of four issues:

- * Investigating the complaint
- * Protecting the informant.
- * Stopping the corrupt practice(s) complained of.
- * Ensuring that wrongdoers were properly dealt with.

It may be that these perceptions of the ICAC's failures have had a knock-on effect on potential informants to your Royal Commission; they will certainly be anxious to know how the Commission handles matters of confidentiality and protection. Could you ask the Hon the Royal Commissioner to supply responses to the following:

1. What is the commission's policy on those seeking confidentiality?
2. How does the commission protect an informant from reprisal, either physically or in his work?
3. What is the commission's policy on cross-examination of informants?
With every good wish, etc."

Symonds replied that all manner of things were apparently hurtling forward at the time; the Commissioner could not reply instantly. I said I didn't want him to write the Bible. Justice Wood eventually found time on Tuesday, June 6, the day after that historic day in the history of New South Wales and its Police Service when Detective Inspector Graham (Chook) Fowler had the mortification of sitting in the witness box and seeing that his chum, Detective Sergeant Trevor Haken, was a quasi-whistleblower and had been covertly recording him on video and audio tape for several months. (I say "quasi-whistleblower" because Haken did the job to save his own skin, not for the good of the community.)

This is what Wood said:

"The specific questions can only be answered very generally because of the security implications. Subject to that the answers are:

1. Confidentiality is extended to all who are spoken to as witnesses, or as informants or as sources of intelligence. Statutory obligations of security (non-disclosure) apply to all staff and only I can approve release of names or intelligence. Where the person in question is willing to give evidence then naturally there is a release of confidentiality but only to the extent required for that purpose.

2. Witness protection, as appropriate for each case is given, which can range from full protection to more simple measures such as suppression of names and personal details or codes. Additionally, witnesses will be able to give evidence from a private room with faces etc. blurred electronically where that is necessary, by reason of their age (paedophile term [of reference]) or special security consideration. If there is any problem at work that will be monitored as we ask witnesses, particularly police whistleblowers, to keep in contact and report problems. We will respond to any harassment by calling those involved and by direct complaint to appropriate senior police. We also have counselling support available, and follow-up is part of our policy for those wit-

National campaign for a Royal Commission into the NCA

The Victorian branch of WBA is requesting the support of all WBs in Australia in a case of national significance. In Marh 1978 Mr Mick Skrijel blew the whistle on drug trafficking from coastal ships in South Australia. As a result of his disclosures Mr Skrijel has been the subject of extraordinary harassment, including the destruction of his boat, boycotts of his fishing business, burning of his house, bombing of his car and the attempted rape of his daughter. There has been no conviction of any persons in relation to these incidents, nor in relation to the original claims of drug trafficking. However, in 1985 Mr Skrijel was charged with the illegal possession of drugs explo-

sives and a firearm by officers of the National Crime Authority (NCA) and the Victorian police. In 1987 he was convicted of these offences and subsequently served six months in Pentridge prison.

Mr Skrijel successfully appealed his conviction in 1988 arguing the evidence against him was fabricated. After submissions to the Joint Parliamentary Committee on the NCA in 1990, Mr Skrijel eventually obtained in 1993 a limited inquiry into the circumstances of his conviction. This inquiry was conducted by Mr David Quick QC. Mr Quick reported to the Federal Attorney General and the Federal Minister for Justice in April 1995. He concluded that evidence against Mr Skrijel

has indeed been fabricated and recommended a royal commission into these matters. However, the Minister for Justice, Duncan Kerr has rejected the recommendation referring the matters instead to the Police Ombudsman (Victoria).

WBA (Victoria) regards Mr Kerr's action as totally inappropriate since the Ombudsman had limited jurisdiction. The WBA is calling for a national campaign to demand a federal royal commission into the NCA and the circumstances of Mr Skrijel's case over the entire 17 years. WBA seeks the support of all WBs in this campaign and recommends sending letters to Federal MPs and to the Joint Parliamentary Committee on the NCA. □

nesses who may have a problem.

3. If called as witnesses, relevant cross-examination is unavoidable because of the requirements of natural justice and because of the desirability of having serious allegations publicly tested by those who may be able to throw additional light on them. However, informants who are spoken to on an intelligence-only basis are not subject to cross-examination as such. Necessarily, they will be closely questioned by our investigators, as much chaff, if not totally unreliable information, also finds its way to us."

Except for 3, that sounds more or less all right to me, but whistleblowers will be better judges of that, and I suppose the final verdict will come from someone like Mr Haken.

As for 3, Australian Commissions of Inquiry, e.g. ICAC, Wood, are supposed to be inquisitorial in form, i.e. investigations into the truth, but in practice they are a bastard form, and retain certain aspects of the adversary system, i.e. cross-examination by lawyers. Since one of the lawyers in the adversary system is usually trying to obscure the truth, this tends to make the inquiry into the truth a contradiction in terms. I see little natural "justice" in a system which allows a person with an interest in concealing the truth to give his lawyer "instructions" about the whistleblower that are lies, and also to instruct him to cross-examine the blower thuggishly in an attempt to make him say that black is white.

Such legal thuggery, if permitted, will clearly result in wretched scenes in, for example, the case of a child who has informed on a paedophile. I see no reason why the Commissioner should not go the total inquisitorial route, i.e. that he does all

the examining and cross-examining himself from a dossier prepared by his lawyer-supervised investigators, with lawyers for the dubious permitted to do no more than give the Commissioner a list of questions they would like asked, or he may have overlooked. The effect is that the cross-examination is done only by a person politely searching for the truth. As it happens, Wood himself is a dream cross-examiner; he gets in short order to what is clearly the truth.

(This is also the obvious solution to the problem in a criminal trial concerning alleged rape. The alleged rapist can avoid cross-examination altogether, while some judges, in the interests of what is laughingly called a "fair" trial, permit a deal of legal thuggery on the alleged victim. Both parties should be cross-examined in a sensitive way by the judge.)

Importantly, as far as potential whistleblowers are concerned, the fact that Haken was apparently not sprung encouragingly suggests that the Commission may be leak-proof.

Finally, the stunning demarche of the Haken tapes may appear to tend to confirm the findings of the WB Association's survey of members' views of the adequacy of some ICAC investigations. □

Evan Whitton is doing the jokes at the Wood Royal Commission for The Sun Herald and is author of Trial by Voodoo— Why the Law Defeats Justice and Democracy, published by Random House, Australia.

Editor's Soapbox

Since becoming involved with the WBA, I have observed some interesting differences of opinion arising amongst members at various meetings. Mostly this has resulted in healthy debate. As a group, I think we are learning how to deal with many different situations as they arise. As individuals, we all have different opinions and we are learning to "agree to disagree" when the situation demands it. At the Sharing and Caring meetings, we are currently focusing on ensuring that all who attend are allowed to voice their opinion and on ensuring that "the individual's opinion" is accepted. I hope that we can ensure that the "Group Think" syndrome does not start to have an adverse effect within the WBA.

Hopefully the situation will rarely arise where a group of WBs cannot accept another WB's opinion. However, I think we should all be wary of this happening, as without a doubt, it already has and will again. WBs, given their experiences, should be in a good position to recognise these situations and able to take appropriate steps to avoid any adverse outcome.

Having said that, I should warn everyone that I am never happy unless I get my own way, and I, of course, am always right!

Then again, you may disagree! □

NSW Branch activities

From the last General Meeting

At the last General Meeting, Ross Sullivan provoked an interesting discussion on the ins and outs of defamation law, both from the perspective of WBs pursuing actions, where, as is very common, they have been defamed, and from the perspective of defamation charges being brought against a WB, sometimes as an intimidatory or delaying tactic. Defamation law is incredibly complicated and is changing all the time. Ross noted that defamation law originated largely as an alternative to duelling which was used to resolve insults and he wonders at times if this is really progress!

Those interested should attend the defamation directions hearings each second Friday at the Supreme Court and defamation trials which are held from time to time. On relevant literature he notes that *The English Gatley on libel and slander* is now out of date. The two volume Canadian text *Law of Defamation* by Brown is comprehensive. *Fleming on Torts* (7th Edition 1987) is good for an introduction to the subject and *Tobin & Sexton Defamation Practice and Procedure* loose leaf volume (approx \$400) is the bible. These are available for reference and photocopying at University Law Libraries and the State Library, except Brown which is available at the Universities of NSW and Macquarie. Waverley is the Municipal Law Library. The 1974 Defamation Act may be purchased for a few dollars from the Government Printers on the corner of Elizabeth and Hunter Streets, Sydney. Ross recommends "Aspects of the Law of Defamation" edited by J. Gibson, Dewey Number 345.940256. Seminar Papers from the College of Law are also very helpful.

Basically defamation is very complex but one should not be put off grappling with it.

One would have thought that it makes no sense for an organisation to take action against a WB as this only ends up with them getting adverse exposure in the court on the issue they were attempting to cover up in the first place!

Jean Lennane and Stan Karpinsky advised that there has been quite a reaction to the publication of the results of the survey on the ICAC. Jean also received an immediate response from Barry O'Keefe, the current Commissioner of the ICAC, requesting the names of the survey participants. A hope was expressed at the meeting that there will be a parliamentary inquiry and that it is not beyond the realms of possibility that some people may get compensated for any loss or disadvantage

which they have incurred as a result of having referred matters, in good faith, to the ICAC. Refer also to section below re the ICAC and the Parliamentary Joint Committee.

Next General Meeting

At the next General Meeting on 2 July, the current NSW Committee will stand down and hold elections for a new Committee. Nominations for any of the six positions can be sent to the current Secretary, Jim Regan (please call him first) in advance of the meeting; or simply made at the meeting. It is important that we have a number of other people as official "Committee Members" to assist in getting the work done. The lives of WBs, including those of the basic six Office Bearers, are always liable to be subject to time pressures as well as pressures from sickness and unfavourable work situations. Please will all members give consideration to becoming part of the Committee.

Flexibility is the name of the game and anyone who is able to give help at any time is very welcome to do so without having to be an official member of the Committee.

Sharing and Carling Meetings

PLEASE NOTE: We are changing the night for these meetings from Mondays to Tuesdays. The last Monday meeting will be on June 26 and the first Tuesday meeting will be on 4 July. These meetings give WBs the opportunity to talk about their trauma or case and can be very good therapy. We have also been using this time to discuss how we can better handle our cases, sharing useful tips and ideas. No person attending these meetings is an "expert": we are all learning as time goes on the basics of "how to deal with newcomers" and "how to ensure we meet all the different needs of individuals". These meetings are getting better all the time, especially as we learn from some of the mistakes we have made along the way.

Committee Meetings

Apologies to anyone who tried to attend the Committee meeting on 18 May. Due to all Committee members being variously involved with court cases, illnesses and other personal or business commitments, the meeting was cancelled and we

were not in a position to let everyone know. Hopefully this will not happen again. The next Committee meeting will be held at 10.30 on Sunday 2 July and will include preparation for the election of the new Committee which will take place at the General meeting in the afternoon.

We appreciate all offers of assistance and input at the Committee meetings and at this early stage of the Association's development, all ordinary members can play a full part at these meetings.

Like any voluntary organisation, the amount of time available, and the contribution Committee members are able to make, change all the time and are always subject to the unforeseeable circumstances that WBs invariably find themselves subjected to. People who have become involved have gained enormously as a result of feeling that they are actively involved in achieving changes to the WB situation in general. One has stated that they regard their involvement as part of their therapy: it is a very positive action to take to move from being a victim to being an activist and taking matters into your own hands.

Social Activities

Given that we are hoping that a number of WBs will get together for social activities during the weekend that the AGM is being held, the NSW Branch has not organised a third Sunday social activity for July. It is anticipated that these will continue in August.

Publicity

The NSW Branch has recently obtained continuous free advertising for our meetings in a local Newspaper, *The Glebe*, which covers Balmain, and in the "Causes" section in the *Metro*, which is issued each Friday by the *Sydney Morning Herald*. This has been successful in bringing in a number of new members.

As result of the placement of the advert in the *Glebe*, this paper subsequently published a two page feature article about Whistleblowers.

Press clippings Files

Debbie Locke has started clippings files for the NSW Branch and would appreciate any interesting clippings from members for our records. These can be sent to the NSW P.O. Box in Gladesville. □

National activities

National Annual General Meeting

The National Annual General Meeting will be held at the Church Hall in Balmain, Sydney at 2.00 p.m., Saturday 29 July 1995. All current National office bearers will be standing down and elections will be held for new National Committee members. Please give some thought as to whether you are willing to become more active in the WBA, and would be willing to stand for election. Nominations for candidates are required in writing, should be signed by 2 members and accompanied by the written consent of the candidate and sent to Shane Carroll, Secretary WBA Inc., PO Box E252 Queen Victoria Terrace, Parkes, Canberra, ACT 2600. If this poses a problem for WBs who are not in close contact with others, Shane can be reached on 06 231 2498.

All members and supporters are welcome and this will provide an opportunity to meet WBs from other states and from the National body.

Evan Whitton, a prominent journalist and author, will be the guest speaker. We are hopeful the NSW Attorney General

will open the meeting.

A meeting of the outgoing National Committee will be held at 11.00 am on the same day and a meeting of the incoming National Committee will be held at 10.00 am on the following day.

A number of WBs in Sydney can offer accommodation to a few people who wish to come but feel the cost of hotels etc., would make a trip to Sydney prohibitive. Contact Lesley on 02 365 1723 for further information.

Senate Select Committee

In 1991, Senator Jo Valentine, The Greens, tabled a Whistleblowers Protection Bill in the Federal Senate. She subsequently retired and was replaced by Senator Christabel Chamarette and the representation of the Greens was also supplemented by the election of another Green Senator, Dee Margetts. Thanks to work of these two Senators, this led to Senator Jocelyn Newman (Liberal) establishing a Senate Select Committee on Public Interest Whistleblowing in 1992. The Committee's "Report of The Senate Select Committee on Public Interest Whistle-

blowing" was tabled in Parliament in August 1994. A number of recommendations were made, the principal one being for the drafting of legislation for the establishment of a Public Interest Disclosures Agency (PIDA) to hear complaints from WBs. There was bi-partisan support for the recommendations by Parliament. The recommendations for a PIDA included the protection of both Public and Private WBs, in the public interest.

To date the WBA is shocked by the revelations of the Samuel's Judicial Inquiry into ASIS which shows the usual degree of intolerance for the personal predicaments of Public Sector WBs and appalling personnel management problems. Had there been a PIDA established, the Government's reputation, and those of its former employees, might not have suffered.

All the good work and recommendations of the earlier Committee, which some politicians indicated may have been in place as early as February 1994, now rest with a new Senate Select Committee which was established to hear unresolved WB cases. However, due to the recent Federal budget funding cuts, some WBs who were expecting a hearing by this Committee may again find themselves with no further avenue of "in camera" complaint hearing, unless of course a PIDA is established in the meantime. This seems unlikely given that the Government seems currently to be more interested in pursuing legislation which will allow the interrogation and imprisonment of journalists or any other person making a secondary disclosure. As Mike Carlton pondered in the Sydney Morning Herald on 27 May, the next thing we know, they'll be shooting WBs!

The new Committee was originally meant to deliver its findings in June 1995, however some WBA members have been told that this may not now happen until August. There is also speculation over a Federal election as early as August, the outcome of which may seal the fate of this Committee.

Members of the WBA will continue to appeal to any potential political candidates for the establishment of a Federal PIDA in the National Interest.

The Federal Labor Government is yet to show any formal commitment to protection of WBs along the lines recommended by a well structured multi-party Committee last August. However some members of WBA have recently received written commitments from Deputy Opposition Leader Peter Costello to the future establishment of protection measures.

One WB has pointed out that there appears to be a real commitment to the establishment of a Commission of Audit to re-

Book reviews

By RAYMOND HOSER

Split Image— A True Story of International Intrigue by Avon Lovell (416 pp.). Published by Creative Research, PO Box 137, North Perth, WA 6006. Cost \$35, post free.

This book is a sequel to Lovell's first book, *The Mickelberg Stitch*. Both books detail the case involving a \$1 million theft of gold from the Royal Mint in WA. *Split Image* takes over where *The Mickelberg Stitch* leaves off and in many ways supersedes that book. The story line of *Split Image* is how three brothers, Raymond, Peter and Brian Mickelberg are convicted of fraudulently conspiring to steal the gold fortune.

It turned out that key evidence had been tampered with by the crown and that a fingerprint used by the crown had been forged. The story line of the Mickelberg case becomes one of high-level police corruption and of attempts to withhold and suppress the truth. Seven years after the initial theft "new" evidence surfaced indicating the Mickelbergs were innocent. Both of Lovell's books have been banned by the WA Police. The Police Union in WA is currently levying all of its members on a weekly basis to finance legal battles to continue to suppress Lovell's books and to pay court damages awarded against them.

Split Image is convincing proof of serious problems in WA's Police force. The book is difficult to obtain other than directly through the publisher.

Inside Victoria – A Chronicle of Scandal by Bob Bottom, (216 pp.). Published by Pan Macmillan, Balfour St., Chippen- dale, NSW 2008. Cost \$16.50 inc. post- age.

Bob Bottom is well known to many people in WBA. He has authored several best-sellers, all of which I would recommend. The full title of *Inside Victoria* sums up its contents. The subject matter is mainly the high profile corruption and scandals that dogged the latter years of Labor Government in that State in the late 1980s and early 1990s. The book was initially published in 1991. Most of its contents were covered in the mainstream media over the few years prior to publication of the book, so in a sense, little is new, and the book is not itself a major expose.

I recommend it principally because the title has now been remaindered and can be bought for as little as two or three dollars from remainder booksellers. □

Other news

Many WBs are no doubt following with interest a number of stories involving WBs which are currently being reported by the mainstream media. Readers in other states will be interested to know that there are reports on a daily basis on the Royal Commission on the NSW Police Service. Evan Whitton has been reporting on this each week in the Sun Herald. He has kindly contributed an article on issues relevant to WBs in this issue.

Federally, we are watching: the turbulence at the CSIRO; the ongoing "battle" between the Government and the media on the espionage issues and the on-going attempts by the government to suppress the media after its failed attempt to suppress the story about the bugging of the Chinese embassy; the "Hindmarsh Island affair" and the women who have stood up to state that there are no secrets in those enve-

port back to a new Coalition Government within 90 days of the next Federal election, if the Coalition is elected. There seems to be no such commitment in the Government's recent Justice Statement.

The ball is therefore firmly in the Government's court.

Membership

The time for renewal of memberships is coming up on 30 June and we enclosed membership forms with the last Newsletter. For membership renewals simply fill in your name and return the form. For any new members, fill out as much of the form as you can and the Committee will ensure that proposals are signed as necessary.

Membership fees are deemed to be paid from 1 July to 30 June. For those who have recently joined, fees would be deemed to be paid to 30 June 1996. A system to allow for fees for new members is currently being worked on.

In cases of financial hardship the National Executive can admit people to associate membership without payment of a fee. Some people who have been unable to pay a fee have volunteered their time instead. However, we urge those who can afford the \$25 membership fee to send this in with an application form. Application Forms can be obtained from Vince Neary, the National Treasurer, on 02 449 6370.

Funding

The WBA desperately needs funds to cover the Newsletter and other administration costs. Those persons who wish to continue receiving the Newsletter, but who do not wish to join the WBA as a member, are urged to pay a subscription fee. \$12 p.a. would cover the costs of sending 12 monthly issues, and would be most appreciated.

Currently the Committee is discussing various fund-raising propositions, including a fund raising dinner and the possibility of WBA providing guest speakers at Service Clubs. This will take a lot of or-

lopes; and the curious developments in the "Carmen Lawrence and Penny Easton Affair", with vast amounts of interest. The WBA also wonders how long the appalling extent of deaths and disabilities caused by mistakes and pressures on staff in hospitals have been known to the authorities.

Questions arising from these matters relate in important ways to whistleblowing in general: "Do we have the right to free speech?", "What is in the public interest?", "What does the public have a right to know?", "How free are we and our press?", "Who is coercing whom?", "Who is suppressing whom?", and "Why is it that the bureaucracy, the government, the professions, the legal system and the media, so often appear to conspire to keep the truth from being told?"

ICAC Survey and the Parliamentary

ganising, but could be very successful. If any one has any ideas about this (venue, speakers, fund-raising) suggestions and offers of assistance would be very welcome.

If anyone has any other ideas for increasing our membership, or for raising funding for the Association, please call Jim Regan.

Western Australian Commission on Government

The Commission on Government (COG) in WA is currently preparing a Discussion Paper on Specified Matters 11 and 13 in Schedule 1 of the COG Act 1994 as follows;

11. The legislative and other measures that should be taken: (a) to facilitate the making and the investigation of whistleblowing complaints; (b) to establish appropriate and effective protections for whistleblowers; and (c) to accommodate any necessary protection for those against whom allegations are made.

13. The appropriate role, powers and functions of the Official Corruption Commission for the prevention and exposure of impropriety or corruption within the public sector with consideration given to the respective roles of other agencies and legislation.

It is proposed that the Discussion Paper will be published before the end of June this year to promote and facilitate discussion prior to inviting submissions and conducting public hearings on the Specified Matters.

WBA has received a request welcoming any submissions individuals and the WBA may wish to make on the Specified Matters. Anyone wishing to make such submission should write to Ms Laurene Dempsey, Research Officer, Commission on Government, Level 6, 32 St Georges Terrace Perth, WA 6000, phone 09 222 0544.

Comment on the existing legislation in NSW and SA, and on the effectiveness, or otherwise, of the ICAC in NSW and the CJC in Queensland would be most useful. □

Joint Committee on the ICAC

After the dissolution of the NSW Parliament pending the March election, the existing Parliamentary Joint Committee on the ICAC was disbanded and a new Committee was appointed by Parliament last month. The NSW Branch of WBA has since submitted the results of its survey on the ICAC, and is hoping that the new "PJC" will take action with regard to the failings we identified. The WBA has since received a request from the PJC to comment on the ICAC's procedures. It is encouraging that the PJC has adopted this consultative approach.

The Branch has also made a plea to the Premier, Bob Carr, to "take steps to make the ICAC an effective body in the fight against corruption or, failing that, to take steps to close it completely, thereby saving NSW taxpayers the millions of dollars a year that are wasted on it as it stands".

Since the results of our survey on the ICAC were published in the Sydney Morning Herald, Mr O'Keefe, the Commissioner of the ICAC has attempted, in a letter published in that paper, to trivialise the results of our survey by commenting on the small number taking part. The Commissioner also provided an undertaking to investigate breaches of complainants confidentiality. However, when one particular case was then brought to the ICAC's attention, they subsequently declined to investigate.

Section 53 of the ICAC Act allows the ICAC "to refer the matter for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances". WBs have understood this to mean that matters may be referred to the Ombudsman, Auditor General, the police or other independent investigating body as has been implied in some of the ICAC's pamphlets. The ICAC however has interpreted this differently and has referred a very large majority of allegations directly to the department or authority the complainant was complaining about, often without seeking the complainant's agreement or even informing the complainant this was the ICAC's procedure. The ICAC does not regard this as a breach of confidentiality. The WBA disagrees. In recent discussions with one WB a leading journalist for the *Brisbane Courier Mail* described the practice of referring the complaint back to the body being complained about as "pre-Fitzgerald mentality". Independent legal advice is currently being sought by the WBA on this matter.

Since publishing the survey the WBA has been contacted by a number of individuals who are also dissatisfied with the ICAC and the calls keep coming! This indicates that the survey revealed only the tip of an iceberg.

Where this all will lead we don't yet know but we will keep you informed. □

Other activities and organisations

National Conference on "Whistleblowing on the Mining Industry"

Due to the large number of mining industry WBs profiled in the last couple of years, Isla McGregor is hoping to organise a national conference of WBs with issues relevant to that industry later this year. The conference format currently proposed is: speakers in the morning and workshops in the afternoon - depending on whether the conference is held over one or two days. A plenary including resolutions would wind up the conference. Isla is keen to hear from anyone who is interested and can be contacted in Tasmania on 002 391 652.

Network for Intellectual Dissent In Australia

IDiA is designed to bring together individuals who have experienced or are concerned about suppression of intellectual dissent. Details of contacts in the network are publicly available and can be obtained from Isla McGregor, 24 Summerleas Rd, Ferntree, Tasmania 7054, phone 002 391 652.

IDiA has also been publishing Media Watch, an annual Newsletter covering interesting WB stories and related issues which has a circulation of at least 1000.

Anyone who has news clippings or articles on WB cases should send these to Isla by the end of June for inclusion in the next issue. High quality copies are needed for this publication and if there are a large number of clippings and articles, Media Watch could be published on a quarterly basis.

Australian and New Zealand Conference on Sexual Exploitation by Health Professionals, Psychotherapists and Clergy

This is the first conference on this subject and is to be held on the 12-14 April 1996 at the Holme Building, University of Sydney. A number of very interesting guest speakers have already been arranged. However the organisers of the conference are still accepting papers and submissions. These should be sent to CAHPACA, PO Box 674, Rozelle, NSW 2039. The deadline for submission is 1 August 1995.

Class Actions

A group of WBs is currently discussing the possibility of taking Class Actions against different organisations for damages to compensate for the loss and disadvantage caused to them in reprisal for their having exposed various forms of maladministration within those organisations,

where the exposure was in the public interest. Much further work and research will be required to determine the viability of taking any such action.

ADB and HREOC

Another group of WBs is getting together to provide support and to discuss their concerns and any possible action which can be taken as a result of having taken matters to either the Anti-Discrimination Board or the Human Rights and Equal Opportunities Commission. Anyone who has concerns or comment to make on this matter should contact Marie Wharton on 042 963 764.

Other organisations which pursue similar objectives to the WBA, which members may be interested in contacting.

The Free Speech Committee

Aims are to promote freedom of expression and information. Contact Dinah after hours on 02 389 4009.

Justice Action

This is a group who produce an interesting quarterly magazine called "Framed" and hold meetings on the first and third Wednesday of each month at 6.30 p.m., on the 3rd Floor, 391 Sussex St., Sydney. □

Objecting to Stuart Littlemore's epithet of the "Flat Earth Society"

The Free Speech Committee responds

The author of this article, Tony Katsigiannis, is the President of the Free Speech Committee. He is also a writer and the recipient of a Literature Board grant. He has worked as a script editor for ABC TV. Membership of the Free Speech Committee is available from PO Box 55-s, Bexley South, NSW 2207. \$20 for employed, \$10 for pensioners and unemployed.

In a recent article published in this newsletter, Stuart Littlemore made derogatory references to the Free Speech Committee, comparing us to "the flat earth society" and suggesting that we support Rupert Murdoch.

This is so much nonsense.

To my knowledge, Littlemore has never made any serious attempt to familiarise himself with the work of the Free Speech Committee and knows little about our policies. Let me set the record straight.

The Free Speech Committee was formed in 1984 to promote freedom of expression, freedom of the press, reform of the defamation laws and diversity in the ownership of Australia's media. The organisation is non-party political and membership is open to anyone who supports its aims.

The writers Dorothy Hewett, Alex Buzo and Phillip Adams are all members.

In recent years, the Free Speech Committee's priorities have been to campaign

for a liberal defamation law and greater diversity in the ownership of the media.

We have never promoted the interests of Rupert Murdoch or any other media mogul.

On the contrary, we have several times challenged the media moguls' stranglehold on the Australian media. In 1986, when the Australian Broadcasting Tribunal announced its inquiry into the restructuring of Rupert Murdoch's News Corporation, the Free Speech Committee made a submission and sought standing - unsuccessfully - before the tribunal.

In 1987, we were part of the coalition "Free the Media" which campaigned against Rupert Murdoch's takeover of the Herald and Weekly Times media group.

In 1988-89, we were granted standing at the Australian Broadcasting Tribunal inquiry into whether the Bond Group of companies were fit and proper to hold radio and TV licences. (We argued they weren't.)

More recently, we campaigned against the sale of the Fairfax media group to Australian and overseas media moguls.

In the interests of a more diverse opinion, the Free Speech Committee supports the breaking up of the big media conglomerates, and promotes the growth of small and medium sized concerns.

At the same time, we uphold full and vigorous reporting by the press.

We want writers, broadcasters and publishers to have the capacity to subject our political, business, sporting and cultural leaders to the closest scrutiny, and for a range of opinions and information to be published about them.

Full and rigorous reporting and commentary on policy issues is the lifeblood of democracy.

Australia has a nervousness about the impact of words. We have tended to favour restriction, suppression, censorship and the heavy hand of defamation law as a way of stifling opinions and reports that may

be idiosyncratic, uncomfortable, even incorrect.

This has tended to reinforce the insularity of Australians, and has tended to create a society that is not particularly competent at conducting rigorous debate, is overly sensitive to criticism, takes itself frightfully seriously and has a distorted view of its position in the world.

In a major report on defamation published in 1989, Associate Professor Michael Newcity, formerly of Macquarie University, stated that "defamation suits are filed in the Sydney Supreme Court at a rate at least 80 times greater than the rate at which suits are filed in American courts".

The enormous volume of defamation actions says a lot about the sort of people we are, and the growth of this "industry" reveals that by far and away the bulk of plaintiffs are too thin skinned.

Damages verdicts in the Sydney Supreme court have become astronomical, and often bear no relation to the magnitude of the damage caused to reputation. Figures such as \$1.3 million in *Carson v Fairfax*, \$350,000 in *Ettingshausen v ACP*, \$300,000 in *Makim v Nationwide News* and \$100,000 in *Blue Angel v Fairfax* give cause for alarm.

And, in case you think it is only the big media organisations which are vulnerable to defamation, think again.

The authors Dorothy Hewett, Alex Buzo, Amanda Lohrey, John Bryson and Nigel Krauth have all felt the blowtorch of defamation. (In fact, it was Stuart Littlemore who, campaigning on behalf of Senator Terry Aulich, tried to suppress parts of Amanda Lohrey's novel *The Reading Group*.)

It's very well for Littlemore to say that various defences are available in defamation. The truth is, they offer about as much protection as a leaky condom at an orgy.

Defamation is one of the most complex and specialised areas of law in this country. The "dozens of defences" that Littlemore refers to did not prevent him from being served with a writ for libel recently. (And how embarrassing to be sued by a fellow media lawyer, and a popular one at that!)

Sadly, if you're on the receiving end of a writ, it's almost impossible to get out of it unscathed. The bills can be simply astronomical.

Practitioners of defamation law are a small but select group who command fat fees. It can take up to three years for the case to come to court, three years during which stress and anxiety take their toll.

And, as Littlemore knows, it is hard to predict the outcome of a defamation action with any degree of certainty.

The defamation laws of this country are simply stuck in the Dark Ages. They are a constant risk, a veritable minefield, for the unwary. And writers are a high risk group, by virtue of the very nature of their occupation.

Littlemore's campaign against the Free Speech Committee needs to be exposed for what, in my opinion, it is: a self-inter-

ested demand to maintain a regime which is biased in favour of his clients, the suees (sewers?).

It is not widely known, but defamatory imputations that are sued upon hardly ever get to trial. About eighty percent are settled, often on terms not to be disclosed. And with these settlements rarely is any public apology made.

In other words, what becomes important for a plaintiff is the money, not the restoration of reputation in the eye of the public.

What the Free Speech Committee would support is a system whereby the bulk of the frivolous gold-digging defamation actions are dispatched expeditiously and those that are genuinely aggrieved by the deliberate or even grossly careless lie could achieve speedy, effective and inexpensive redress.

We would support the principle of a "fast track" system of apologies and retractions as an option for damages, but we suggest that this may be more effective for both parties if it is dealt with outside the court structure.

At the moment, a plaintiff who is prepared to settle for a retraction and apology still has to endure considerable costs to get there. And so does the defendant in that situation.

The Free Speech Committee proposes an arbitral body, which would be an alternative to the court-controlled litigation system, whereby both plaintiffs and defendants could seek a non-monetary settlement for non-economic loss. It could be conducted cheaply, and lawyers would not be necessary to achieve fair ends for both parties.

At the moment in Australia the media are so unnerved by the defamation regime that they are chilled into the anodyne, unstimulating condition it is in today. The populace is fed a diet of media muck,

largely because the publishers are too afraid of publishing any significant investigations or serious critiques.

The overall damage this is causing to our development as a culturally rich society is incalculable. On top of this the media doesn't like apologising because this is seen as an admission of having defamed someone.

Finally, I would like to reject Littlemore's claim that the Free Speech Committee opposes the enactment of privacy laws.

We have never taken such a position. My own view is that care needs to be taken to ensure that privacy law does not serve to prevent scrutiny of matters of public interest.

To take some of Littlemore's examples: I believe it would be legitimate for the media to report that a minister of religion visited a brothel if he were a morals crusader; it would be in the public interest to know that a head of security had visited a brothel if he were keeping records on the sexual habits of citizens.

Each case would need to be looked at on its own merits. □

Research, education and information

The amount of research on and interest in WB issues is increasing all the time. Research into the need for legislative changes, the effects on health, the cost to society, and the need for WB "Protection Agencies" or "Public Interest Disclosure Agencies", and how these should operate is currently in progress at a number of different universities throughout Australia. One Masters student is currently researching the subject "Does the ICAC have a future?" Another Honours Student from the Criminology Department at Melbourne University attended the General Meeting in Sydney on 4 June and also, over a period of 4 days, interviewed a number of WBs in the Sydney area on various aspects of whistleblowing for her thesis.

It would be extremely useful if WBs could prepare a brief "potted history" of their experiences. This would (with permission of course) greatly assist any research which is to be undertaken and will help to identify the common problems which the Association wants to address better in the future, by increasing awareness and changing public perception and legislation.

The WBA does not yet have access to the Internet but hopes in the future to use this incredible communication and information exchange resource. Two members do have access and will keep us posted.

Books written by WBs which may interest members are:

Can of Worms by Evan Whitton
Trial by Voodoo, Why the law defeats justice and democracy, by Evan Whitton
Whistling in the Dark by Chris Nicholls
A Collusion of Powers by Phil Arantz.
(Copies can be obtained for \$20 from PO Box 79, Dunedoo NSW 2844.)
Quarter to Midnight by Justice Moffat
Smuggled by Raymond Hoser
The Hoser Files by Raymond Hoser □

Letters and contributions

We would like to hear news and views from other WBs and Branches, and welcome contributions to *The Whistle*. Copies are sent to WB Committee members in each State and Territory with the hope that each will keep us informed about what is going on in their neck of the woods.

Deadline is the 15th of the month prior to publication. We have a backlog of correspondence which will be published as time and space permit. Bear with us, we don't have unlimited time and resource. □