WB

WHISTLEBLOWERS AUSTRALIA INCORPORATED

PO Box M44, Marrickville South, NSW 2204

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

The Whistle

Newsletter of Whistleblowers Australia Inc.

National news

Proposals for the next National Annual General Meeting and Conference

A sub-committee has commenced discussion about a conference to be held in 1996. Initial proposals are: venue – Melbourne; date – over a weekend in mid July or early August; title – *Beyond Whistleblowing - Towards a Culture of Dissent*; suggested subjects are– (1) the social benefits of whistleblowing, (2) different ways of expressing dissent, (3) the failure of the existing 'investigative' bodies (CJC, ICAC, OCC, HREOC, etc.) to investigate and resolve problems and to ensure the protection of WBs.

Also under discussion is the possible involvement of the Free Speech Committee, the Network for Intellectual Dissent in Australia (IDiA), the Centre for Independent Journalism and other social justice groups.

If anyone has any suggestions, i.e. about keynote speakers, topics, format etc., or wishes to submit papers for the conference, please contact Isla McGregor on 002 391 652.

Senate Select Committee

On 27 October, the Federal Government at last responded to the recommendations of the Senate Select Committee's report on Public Interest Whistleblowing dated August 1994. It would appear that the Government has little or no commitment to facilitate the exposure of maladministration, waste and corruption or to the protection of WBs. The Government has given its approval "in principle" for the development of Federal legislation (this comes four years after a whistleblowing bill was first tabled in Parliament!). The Government has disagreed with the Senate Committee's recommendations that legislation should cover employeees in the private sector, the banking industry, universities and the health care industry and has disagreed with recommendations that legislation should give WBs some protection if they go to the media, and that it should provide for a tort of victimisation. The Government has also severely restricted the types of issues which can be disclosed with protection under the legislation. Most seriously, the Government has disagreed with the recommendation that a Public Interest Disclosures Agency be created, choosing instead to consider that existing bodies (Ombudsman, IGIS, MPRA) already exist to deal with disclosures, bodies about which the Senate Committee received numerous submissions which indicated the extent to which they had failed WBs in the past! Finally the Government does not agree that a significant national education campaign directed at changing corporate and official attitudes is necessary.

Members who have not already obtained a copy of the recommendations and the Government's response can do so by contacting Elton Humphery on 06 277 3005. He can also be contacted by anyone who is interested in the two Senate reports, *In The Public Interest* (August 1994) and *The Public Interest Revisited* (October 1995). The WBA is extremely grateful to Kim Sawyer who has put in enormous effort to prepare a fairly detailed initial response on behalf of the WBA, to the Government's disappointing response. He is currently seeking your comments in order that we can present a survey of members views and can be contacted on 03 9344 8061.

WBs are also urged to write to the Minister for Justice, Duncan Kerr, Parliament House Canberra, ACT 2600 (phone 06 277 7260) and/or the Prime Minister and/or their local Federal MP with their opinion on the Government's response. It would also help if local candidates of all parties were challenged about their opinions on public interest whistleblowing.

Comcare Client Action Group (CCAG)

A national Workers' Compensation action group (CCAG) has amassed

Continued on page 2

Continued from page 1

pages of 'evidence' from public servants around Australia which it plans to use in a class action against the Commonwealth's Comcare Insurance Group. CCAG is concerned that Comcare might be using 'hand-picked' doctors to subject injured workers seeking compensation to unorthodox and humiliating medical tests and to provide medical opinions biased against claims.

Anyone who has had a similar experience or who is interested in this issue can contact CCAG President John Peers, PO Box 67, Curtin ACT 2605.

Bullying bosses

An article in the *Sydney Morning Herald* on 14 September gave details of a Griffith University study on bullying in the workplace quoting a cost to business of more than $100 million annually in stress leave, absenteeism, counselling and productivity losses. A similar Swedish study has suggested that the cost of one person being bullied was between $66,000 and $132,000 p.a.

One of the authors of the Australian study, Paul McCarthy, a lecturer in social administration, said: "bullying is a form of adult abuse which is now very similar to the early days of domestic violence. People don't want to admit they are victims of it, or talk about it, because they are frightened of losing their jobs."

The study was funded by Worksafe Australia and found that tactics such as blaming, labelling, verbal abuse, intimidation and threats were experienced by more than 60 per cent of the employees questioned. Over 50 per cent had experienced bullying as part of a management restructure. Those who had experienced it attributed the bullying to: a lack of communication, gaining power, making the manager feel good, scapegoating and wanting to teach lessons. This would strike a familiar chord with most if not all WBs.

The Beyond Bullying Foundation has been formed, based in Brisbane, and will be producing a book on how to deal with office bullies called *Bullying; From Backyard to Boardroom*, which says: "bureaucratic bullying is disguised by claims of increasing management efficiency". Professor Rees of Sydney University was quoted as saying "some companies are trying to turn out clones of Rupert Murdoch who believe you have to argue with your elbows to get anywhere in life".

WBA would like to know if anyone has carried out a study on the total costs of the tactics applied against WBs which would also often include substantial legal costs and the costs of organisations other than the employer. WBs might be interested in estimating the cost to society of their own experience and letting WBA know. □

Major cases of national significance

Academic integrity in universities?

The Senate Committee into unresolved WB cases found that academics who spoke out in the current climate in Universities were often the subject of victimisation and "grave employment circumstances". Evidence was heard from a lecturer at the University of Southern Queensland (USQ), Mr Peter Jesser and from Associate Professor Kim Sawyer from the Royal Melbourne Institute of Technology (RMIT). Evidence was heard from Professor Sawyer that 12 out of 16 academics involved who originally reported malpractice and maladministration had subsequently left the department, some through resignation and transfers while others did not have their contracts renewed.

It has become a feature of employment at universities for the last few years for many academics to be employed on fixed contracts rather than receiving permanent employment or "permanent tenure" as it is commonly referred to in academic circles. This factor alone has made it very difficult for anyone wanting to speak out about maladministration or academic incompetence even to their superiors in a department or a faculty.

The Senate Committee dealt with a reported case of an academic at the University of Wollongong (NSW) whose contract was not renewed after she publicised the fact that students who had failed her course had been allowed to graduate. The Committee also "noted the case of an academic at Curtin University (WA) who was suspended and charged with discrediting the university after speaking about alleged plagiarism".

Mr Jesser alleged that in 1990-1991 he acted as moderator for a unit in the department of Human Resource Management and Employment Relations at USQ. After complaints from a number of students, Mr Jesser and the examiner investigated. "Mr Jesser claims that he found evidence of arbitrary marking, a (disproportionately) high number of failing grades, recording and adding errors and evidence that not all students had the same papers. The University chose not to provide a full submission to the Committee but rather issued a short statement that it 'found fault with almost the totality of the case as stated by Jesser and retained faith in those named by Mr Jesser'".

Associate Professor Sawyer reported mismanagement in the RMIT Department of Economics and finance, including that funding was not used for academic purposes for which it was allocated. He was one of 16 academics who signed a petition in 1992 calling for an audit of the department and an inquiry into management. Professor Sawyer gave evidence that "...as a result of making an academic complaint, he and other were charged with academic misconduct."

(Acknowledgement for some of the above material; article in the Higher Education Section of *The Australian*, 8 November 1995 " Tyranny ignored in pursuit of good PR" by Gabrielle Chan. It is reported in *The Australian* of 15 November 1995 that Mr Jesser has now been dismissed as lecturer at USQ).

Over the past few months the WBA has been hearing more and more of similar cases from university and TAFE lecturers, school teachers, technicians and students. For instance, at one of the universities in Sydney, a senior lecturer in legal subjects was demonstrably exposed as having taught American principles of contract law (rather than Australian) in a course, used the same questions recycled from a previous year's examination in a mid-term examination, failed to prepare material for tutorials in advance of them being held, and sat and read a newspaper during a mid-term examination in which he invigilated while students openly talked and exchanged information. Contemporaneously with these events the dean of the faculty concerned gave this person permanent tenure and the faculty did not renew the contract of another academic who informed the dean of evidence of the academic misconduct. This evidence included a student survey of approximately 80 per cent of the students in the course, statements from students made in the survey and other documentary evidence. Other academic staff in the same department remained afraid to publicly say anything for fear their contracts would not be renewed.

Dr David Rindos, an American archaeologist with an international reputation, who worked as a senior lecturer at the University of WA was also severely victimised after he attempted to address a number of administrative practices that tied in with student complaints of inequitable treatment. A full page article in the *Weekend Australian* on 28 October was devoted to David's experience and of the university's poor administration. Ultimately the reputation of this Australian university has been severely damaged as is evidenced by comments in a letter written by a professor from Cambridge University (UK): "If it were the case that the University (of WA) denied tenure to a respected scholar on academic grounds, particularly if there were suspicion of underlying factors which were not adequately recognised, that might be a setback to the good reputation of your institution".

The administrative failure that is exposed in all these stories surely answers Helen Garner's question – why did the students from Ormond college ultimately take their complaints to the police?

The WBA is keen to hear from employees and students in universities and other educational institutions about any other cases of victimisation as a result of the disclosure of malpractice.

Racial harassment in the police force

Sergeant Ken Jurotte, of the NSW police force is seeking damages against the state of NSW for racial discrimination suffered during his 24 year career. He is currently pursuing his case through the NSW Equal Opportunity Tribunal and he is bravely attempting to expose serious harassment meted out to indigenous police officers. He has been denied promotion on more than 30 occasions and has been financially ruined by being forcibly transferred several times. Evidence he provided included a video-taped recording of two police officers with their faces and arms painted black, mimicking aborigines who had died in police custody which Ken had exposed.

The hearings have been adjourned for some months. WBA wishes Ken well with this case and wonders how much public money is being wasted by the NSW police force in attempting to defend the indefensible.

The Heiner/Lindeberg/Coyne shredding case

The Senate Select Committee on Public Interest Whistleblowing (SSCPIW) has been looking at a case where the Queensland Cabinet destroyed documents which they knew were going to be required for legal proceedings.

The pre-Goss government had instituted an inquiry into the John Oxley Youth centre, following issues raised by WBs. It was conducted by former stipendiary magistrate Noel Heiner. Allegations were made against Peter Coyne, the person in charge, and some documentation, including tapes, was accumulated. When the new government was elected in December 1989, they found that Mr Heiner had unfortunately been appointed under the *Public Service and Management Act* instead of the *Commissions of Inquiry Act*, and this would not give him or witnesses protection from defamation actions. They thought this inappropriate and decided to terminate the inquiry . About the same time, Mr Coyne was suddenly removed and transferred to other duties, so it looked bad for him. He was naturally aggrieved, and sought access to the documentation.

With the enthusiastic support of Kevin Lindeberg, an advocate in the Queensland Professional Officers' Association, and with the help of solicitors, he tried to get hold of the documents, but failed. The solicitors then wrote to the Acting Director General of the relevant department that they intended to institute legal proceedings and warned that they would require the documents for this purpose. However, in March 1990, the Queensland Cabinet decided to order the destruction of the documents, despite their knowledge that Mr Coyne was seeking the documents with legal action in mind.

The Queensland Crown Solicitor argued that the Criminal code had not been broken by this action because the relevant writ, summons or motion had not yet been filed. It was no use notifying of an intent to commence legal proceedings – these had to have been commenced! The WBA agrees with the opinion of others who made submissions to the SSCPIW that though this may be technically correct, the government has in fact deprived a prospective litigant of his rights and this is not in accordance with democratic principles. Although the government argued that its main reason for destruction was to save many people from long and unproductive defamation cases, which would also have been a burden on the public purse, Mr. Coyne was denied natural justice and a great deal of information about a serious problem, collected using the public purse, has been lost as a result of the actions of Cabinet.

Mr Coyne was eventually given what he terms an "involuntary package", one of the conditions of which was (which comes as no surprise) his silence!

Kevin Lindeberg was sacked from his union because of the way he handled the case and he puts this down to the close relationship the union has with the ALP. The Senate Privileges Committee has recently ruled that his dismissal was in the nature of a reprisal. Kevin believes the shredding of the documents and Mr Coyne's package were both unethical and immoral, if not illegal. This case is referred to in greater detail in the report *The Public Interest Revisited*. The first Senate Select Committee recommended that the Queensland Government establish an independent investigation into those unresolved cases within its jurisdiction. The Federal Government has sidestepped this with their response "this is a matter for the Queensland Government"! □

About *The Whistle*

Mailing list

The Whistle is sent to all paid-up members as well as to a wide range of other organisations, politicians, journalists and academics.

Subscription for non-members

Non-member organisations and individuals are urged to pay a subscription fee; $12 p.a. would cover the costs of sending 12 monthly issues, and would be most appreciated.

Letters and contributions

We would like to hear news and views from all interested parties and we welcome contributions to *The Whistle*. If you send a long, complicated story which obviously cannot be published in full, we would appreciate it if you could send a précis as well. We have a backlog of correspondence which will be published as time and space permit. Bear with us, we have very limited time and resources. □

Membership and funding

THE WBA IS COMPLETELY DEPENDENT ON THE RECEIPT of membership fees and donations for continued operation. (Various members are working on other ways to raise funds but finding time to discuss and implement them is difficult.) We urge all members who have not yet sent in their renewal to do so as soon as possible.

Fees should be sent to Vince Neary, National Treasurer, 27 Catalpa Crescent, Turramurra, NSW 2074 (phone 02 449 6370). Application forms can also be obtained from Vince. New members should fill out as much of the form as possible and the Committee will ensure that proposals are signed as necessary.

Any donations made at the same timeas joining WBA, or any other time, would be greatly appreciated. We are in great need of purchasing a copier and other equipment to save time and costs. □

New south wales

Can all members please note that Richard Blake, the NSW Branch Secretary, has changed his phone number to 02 559 1680.

Meetings

At the Monthly Branch Meeting on Sunday, 3 September David Lewis from the UK, a Visiting Fellow at the Faculty of Law, University of Wollongong gave an interesting talk on his review to date of whistleblower legislation in Australia and the UK. David pointed out that the NSW Act makes it a criminal offense for "detrimental action to be taken against a WB" but does not provide for compensation to a WB who has suffered as a result of this. On the other hand the UK Bill provides for unlimited compensation to the whistleblower, particularly for unfair dismissal, but does not make it an offence for a person to take action against the WB. David also pointed out that the SA Act does seem to allow for the protection of WBs in the private sector. The UK Bill leaves WBs with the burden of proving that breach of confidence is in the public interest and David pointed out that it is notoriously difficult to predict when a court will hold that this is so.

At the Monthly Branch Meeting on Sunday, 1 October, Bob Gaussen from Mediate Today Pty Limited gave an interesting talk about mediation as a dispute resolution mechanism. Mediation can provide an alternative to lengthy, much more costly, and often traumatic litigation. Moreover, creative compromise solutions can sometimes be devised which the adversarial court system is not geared up to look for.

If agreement between the parties cannot be reached, the matter can still be referred to the courts. However Bob noted that 90 per cent of his company's cases had been successfully mediated. During question time members asked if there were any statistics on the percent-

BOOK REVIEWS

Take Two: The Criminal Justice System Revisited
by Tim Anderson

TIM ANDERSON HAS BEEN WRONGLY IMPRISONED TWICE, most recently for being wrongly accused over the 1978 Sydney Hilton Bombing. Altogether he has spent seven and a half years in prison, yet he has no criminal convictions.

Take Two is the chronicle of a police vendetta, a personal history, and a portrait of the NSW criminal justice system, which sanctions abuses. It attempts to expose some of the unpleasant hidden features of the system in prisons, among the police and among the judiciary, e.g. suppression of rights, police verballing, prisoner informers, corruption, and frame-ups.

It also presents an analysis of the powerful and vital role the mass media play in conditioning public views about crime and police.

Hard copies are available for $15 (including postage) from Tim Anderson, PO Box 109, Glebe NSW 2037.

NOTE. There is ongoing coverage in the NSW media regarding calls for a joint NSW and Federal Government inquiry to be held into the Hilton bombing mystery(s). Since, among the unanswered questions, there are questions regarding the involvement of Federal security agencies and of the defence forces, only an inquiry with Federal support and authority will have the power to determine the answers. Mr Carr has recently proposed to make all relevant State files available to the public, but there appear to be disputes at high levels about this and attempts by various authorities to put restrictions on what information is to be made publicly available. □

The Right to Know: The Inside Story of the Belgrano Affair
by Clive Ponting
Published by Sphere Books Ltd, 1985.

This book is an ideal read for WBs. Ponting is a man of outstanding ability who moved in the most powerful circles of government in the UK. The book documents his experience after he found himself charged with treason over the release of information to the Parliament in the public interest. It gives a disturbing account of the web of intrigue and double dealing that really exists between the politician, the bureaucracy and the judiciary.

Ponting's ability to flush out waste in the Ministry of Defence brought him to the attention of the Prime Minister, Mrs Thatcher, who rewarded him with an OBE in 1980. However to Ponting's dismay, waste and mismanagement in Whitehall was allowed to continue unabated.

His career was ended abruptly in 1984 because he put his conscience above the deceit of the British people. At stake was the misleading of a parliamentary inquiry into a breach of international law by the Thatcher government over its orders to sink the Argentinian warship *Belgrano*. The ship was sunk with the loss of some 200 lives when it was 200 miles outside of the recognised rules of engagement or exclusion zone. Under the Geneva Convention, which endorses WWII Nuremburg principles, such an act, if proved, would amount to an indictable war crime against humanity.

In the first instance, Ponting did not go to the press; he raised his concerns with the Leader of the Opposition. Upon a witch-hunt by security staff he voluntarily confessed that he had given certain information. He reached an agreement with his political masters to resign free from prosecution, but the Thatcher government breached this agreement and had him charged under section 2 of the UK *Official Secrets Act*. The trial at London's Old Bailey was supervised personally by the Prime Minister, using a hand picked judge. In his defense, Ponting pleaded " The right to know in the interests of the State" within a democracy.

The one redeeming and encouraging feature that flows from Ponting's experience is the ability of ordinary people to see the corruption and the abuse of power for what it is. Despite Justice McCowan instructing the jury to convict Ponting, his peers thumbed their collective noses at the establishment by returning a unanimous not guilty verdict.

After reading this book, if WBs are contemplating legal action, or find themselves in a position of action being taken against them, they should insist wherever they can upon a jury rather than a politically appointed judge (a proposition supported by Justice Moffitt, former President of the NSW Court of Appeal in his book *Quarter to Midnight*).

There are many parallels with Ponting's experience that are applicable to Australia. While many Australians want to ditch the Queen as head of state, it appears that the republicans are happy to retain the draconian UK *Official Secrets Act*, which many Australian public servants are required to sign.

It seems a touch ironic that even staunch republicans such as Malcolm Turnbull, who vehemently defended the right of the British spy, Peter Wright, to publish his book *Spycatcher* in breach of the *Official Secrets Act*, are conspicuously silent about the fact that in their own backyard, fellow Australians are kept shackled by the same colonial code of silence. □

(Contributed by Bill Wodrow in Canberra)

age of times both parties to a mediation were in fact satisfied with the process and the outcome, especially on reflection after a time. Bob agreed that there is not much information on this. WBs pointed out that mediation where one party is substantially more powerful than the other could result in the less powerful party feeling forced to settle. The speaker said it was the practice of his company to ensure that a cooling off period condition be incorporated into the rules at the outset of any mediation if either party desired. WBs are urged to demand this condition if they go to mediation. However, the imbalance of power is a problem relevant to both litigation and mediation, even with a cooling off period, to which no solution has yet been found.

The Sydney Sharing and Caring Meetings have been well attended, averaging about ten people over the last two months. A Sydney member would be interested in meeting during the daytime. Could anyone also interested in daytime meetings contact Richard Blake.

Social activities (Sydney): at present we are having a restaurant lunch outing on the third Sunday of the month. Contact Bob Amato on 0412 972 900 or Richard Blake on 02 559 1680 for details.

Branch Meetings are at 1.30 p.m. on the first Sunday of each month. Everyone is welcome.

Other news

Calling the bureaucrats to account

The Australian Democrats have moved a motion in the NSW upper house to establish estimates committees along similar lines to those in the Federal Senate. Such committees have the power to cross-examine ministers, heads of departments and other public servants and this would open up the bureaucracy to greater scrutiny. The Estimates Committee in the Federal Senate has assisted some WBs in exposing waste, mismanagement and corruption in the public sector by calling senior bureaucrats to account.

Report on visit to the St James Ethics Center by WBA member Carolyn Hayes

The idea for the visit came from a discussion on organisations and ethics at our July National Conference. I found good reason to envy the St James Ethics Centre: unlike us they have funding, premises, rooms, facilities and equipment, a library, staff and a freecall number for counselling!

The Centre is a well-organised and professional organisation. Established in 1989 by the St James Anglican Church, it responds to confidential requests from individuals and organisations in both the public and private sectors. It does not act in any conciliatory or activist role. Referrals may be made to the WBA where appropriate.

The Centre holds the view that there is a universal ethical sense which is fundamental to human nature; the challenge is to raise the consciousness to this sense.

Many services of the Centre are of relevance to the WBA:

Consulting - the provision of professional services associated with the management of issues in business and professional ethics.

Round tables - individually designed to create a forum where issues of practical concern can be discussed.

Counselling - a confidential service to individuals and organisations concerned with ethical issues with a freecall number provided by Telstra. This service is also available to the 300,000 members of the Community and Public Sector Union.

Vincent Fairfax Ethics in Leadership Awards - opportunities for persons 25 to 35 years of age who demonstrate ethical leadership to attend courses of training and experience.

Submissions to and participation on committees - including the Ethics Committee of the Law Society, Institute of Engineers, Institute of Chartered Accountants, Tresillian Family Care Centre.

Print resources - for annual lectures and symposia on ethical issues.

Clipping services - a comprehensive library of clippings from newspapers, etc. relating to ethical issues, e.g. fraud prevention, freedom of speech, industrial relations.

Quarterly Newsletter - City Ethics.

The St. James Ethics Centre is located at Level 9, 15-17 Young Street, Sydney, NSW 2001. Phone 02 241 2799, freecall 1800 672 303

Royal Commission into the NSW Police

A WB recently suggested that this commission should be renamed " The Royal Commission into the failings of the ICAC and other investigative bodies in identifying and preventing corruption in the NSW Police"! An interesting concept.

The ramifications of the Commission are going outwards as well as inwards. Already, the terms of reference have been extended to investigate pedophile activities generally, beyond the State borders. And, more recently, disclosures have pointed to (1) possible corruption by members of the Federal Police and of the National Crime Authority, as well as by members of the legal profession, and (2) to failings in the criminal justice system. The NSW Premier, has said he would be prepared to approach the Federal government to obtain an extension of the Commission's powers if Commissioner Wood requested this.

In recent months the WBA has received complaints from some members and others that they had had problems when and after approaching the Commission with evidence. As a result, a meeting was held at the Commission's offices on 19 September attended by National President Jean Lennane, NSW Branch President Jim Regan, Branch Secretary Richard Blake, the Commissioner's chief assistant Virginia Bell QC, and her assistant Michelle O'Brien. Unfortunately, we can only report at this point that we received a courteous reception as we are concerned about possible legal repercussions. It seems clear however that the Commission has been inundated with information from both police and from members of the public and that it does not have sufficient resources to provide full support and protection to all persons assisting them. The WBA believes that it should in any event be the Police Commissioner's responsibility to ensure that serving police officers are not victimised because they have assisted the commission.

The commission should be renamed 'The Royal Commission into the failings of the ICAC and other investigative bodies in identifying and preventing corruption in the NSW Police'!

Commissioner Wood is due to prepare a special interim report by 31 January 1996 which will be confined strictly to the procedures for, and handling of, the investigation of complaints of police misconduct or corruption by appropriate investigate bodies. Thanks are due to Jean Lennane who recently prepared and lodged a submission to the commission on behalf of the WBA in relation to this issue. The submission incorporates the WBA's survey on the ICAC and includes suggestions on the restructuring of the police service to make it more manageable, for the creation of a body which must have as its sole focus the full investigation of all complaints (since there is a clear conflict between functions of prevention and investigation) and for the need to ensure complainant (i.e. WB) satisfaction with the process and the outcome including that the complainant should, at the end of the day, be provided with a clear explanation as to why any conduct in question was deemed not to be corrupt

where this is the outcome. Also suggested is that WBs would be provided with assistance to put their allegations in writing, the focus of any investigative agency should be on the complaint and not on the complainant and also makes note of the attitude of such an agency with the comment "it should be understood that negative attitudes towards individual WBs signify a positive attitude towards corruption".

The ICAC

On 15 September a number of WBs attended a public hearing of the Parliamentary Joint Committee on the ICAC at which Mr O'Keefe, the ICAC Commissioner was required to answer a number of questions put to him by the Committee.

When questioned about complaints received from WBs and other complainants about the ICAC (as reported in *Hansard*) Mr O'Keefe said that he was "only aware of an extremely small number of complaints (approximately 16)". He also said "there are some people who you will never satisfy". However, there has been no independent survey conducted of all persons who have brought allegations of corruption to the attention of the ICAC and recent media coverage suggests that the ICAC has received over 20,000 complaints since it commenced operations in 1988 but that only 80 formal investigations have been conducted. *The Whistle* suggests that it is reasonable to speculate that there must be nearly 20,000 dissatisfied members of the public who believe that corruption may have occurred which has not been independently investigated.

Mr O'Keefe was also very keen to promote the ICAC's "prevention and education role" notwithstanding that the ICAC Act lists as its first principal function "to investigate any allegation or complaint which in the Commission's opinion implies that [corruption] may have occurred, may be occurring or may be about to occur".

Mr O'Keefe stated that many allegations received by the ICAC were assessed either to be vexatious or not to constitute corruption. Yet, the expensive inquiry into the *Smiles* matter went ahead even though the ICAC acknowledged prior to the inquiry that there was no indication that corruption had occurred or would be identified. Presumably the Commission's opinion about corruption differs from the opinions of nearly 20,000 members of the public who have referred their concerns about what they believed to be actual or potential corruption to the ICAC.

Recent media coverage quoted John Feneley, solicitor to the ICAC as saying "major improvements to administrative systems arising from [the ICAC's activities] have significantly reduced the likelihood of corruption occurring", although he has not supplied facts and figures to support such a statement. Clearly this is a difficult matter to assess but while corruption continues, and allegations of corruption continue to be made, this opinion of the ICAC about itself is meaningless. Mr O'Keefe mentioned that 64 per cent of the ICAC's recommendations had been implemented. This result had been identified by the ICAC itself. Again no independent review has been carried out and no mention was made as to why 36 per cent of recommendations had not been implemented and what was the impact of this. There was also no mention of whether the effect of implementing the ICAC's recommendations had actually reduced the potential for corruption.

When questioned about whether the public could be assured that they had received value for money from the $80 million plus, which has been spent by the ICAC since 1988, Mr O'Keefe referred to previous ICAC investigations that had identified millions of dollars of public money which had been fraudulently spent. He was not asked to elaborate further on whether or not the public purse had recovered these amounts.

When questioned about whether the public could be assured that they had received value for money from the $80 million plus, which has been spent by the ICAC since 1988, Mr O'Keefe referred to previous ICAC investigations that had identified millions of dollars of public money which had been fraudulently spent. He was not asked to elaborate further on whether or not the public purse had recovered these amounts.

When Mr O'Keefe was asked if there had, in the seven years of its operations, been an independent audit of the ICAC's expenditure or performance the answer was no. Mr O'Keefe when asked if such an audit would be a good idea agreed that it would but indicated that it would not be appropriate for this to occur at the current time.

Apparently the most common complaint received by the Committee about the ICAC was the length of time it took the ICAC to respond with advice as to what the ICAC proposed to do about a complaint. The ICAC recently took nearly four months to advise one WB that they would be conducting an investigation. In the meantime the WB has been dismissed, was unceremoniously frog-marched off the premises and has had to engage a solicitor at their own cost to deal with this situation. (The WBA wonders if, when an allegation relates to one where it is suspected that corruption is about to occur, then by the time ICAC has finished dithering about whether or not it will investigate, the perpetrators could be living in Majorca!)

Mr O'Keefe also indicated that he was upset about comparisons between the ICAC and the royal commission stating " The public image of the ICAC and therefore possibly its effectiveness may be perceived to have been adversely affected by the ongoing comparisons in the media between the results of the royal commission and the work of the ICAC. Little credit has been given in the media to the ICAC – or other agencies such as the NSW Police Service and the State Crime Commission – for the information, intelligence and assistance that has been provided to the royal commission by these bodies". He also commented that the royal commission had actually uncovered only two names not already on ICAC files! (The WBA wonders how long the ICAC had all these names on their files, what they did about this other than passing files over to the royal commission and how many other files they have on public sector employees other than police which are waiting for another royal commission before the information sees the light of day and whether the ICAC is actively storing information on, (covering up or protecting?) these employees? Why would the public give any credit to the ICAC when it is obvious that serious corruption has continued unchecked until exposed by the royal commission?)

Mr O'Keefe also made the curious comment that he had asked his ICAC officers to search out the headlines which had been generated after the ICAC's operation *Milloo* (ICAC's investigation into police corruption) and he noted that those headlines were substantially the same as those now generated by the royal commission. What point he was trying to make was not clear. (The WBA has wondered for some time if the ICAC is more concerned about headlines than investigating corruption and Mr O'Keefe's comments have shed some light on this. Certainly there are many allegations of

corruption which the ICAC has chosen not to investigate and now we all know what ICAC's officers have been spending their time doing!)

In reference to questions from the Committee regarding the appropriateness of ICAC employing officers from the NSW police, Mr O'Keefe indicated that although he did not believe that this was a problem, he had taken note of public opinion and was in the process of reducing the number of NSW police employed by the ICAC. As one Committee member rightly pointed out, either it was a problem in which case no NSW police should be employed or it was not a problem in which case why reduce the numbers?

Subsequent to the hearing of the PJC, two ICAC investigators were exposed by the royal commission. The ICAC has been remarkably quiet about this turn of events.

Secret agreements

There has been much discussion amongst NSW members regarding the practice of public sector bodies, when reaching an out of court settlement, to require WBs to sign away both their right to pursue any other legal action and their right to speak any further on the matter. This latter condition is regarded by many WBs as tantamount to a bribe to shut up.

In September, Vince Neary, our National Treasurer and a whistleblower on State Rail problems for several years, was finally persuaded into consenting (at 1.30 a.m. after 15 hours of negotiations) to sign such an agreement. Mr Neary is now severely restricted in his ability to discuss those matters. Since he has had a lifetime of working for the railways, this is outrageous.

The NSW Auditor General is in the process of investigating a variety of matters, some of which were first brought to the attention of the public by Mr Neary. An article in the *Sydney Morning Herald* on 15 September quoted the AG as saying in relation to an inquiry conducted by his office in 1992 that "the inquiry had concluded that there was much substance in what [Mr Neary] had alleged".

Why was Mr Neary dismissed? Why has he not been reinstated? Why has the SRA required him to sign away his basic right to free speech? What is it that the SRA is concerned about that Mr Neary might say? Why has the SRA since 1992 consistently advised the NSW public that Mr Neary was wrong?

Such a contract as Vince's is not in accordance with the principles of an open and accountable public sector, which should ensure that all its transactions are open to public scrutiny. The Auditor General reported in 1994 that he was against confidentiality clauses, yet seemingly the public sector has ignored him.

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There have been subsequent recent events which are a matter of grave concern to the WBA – Mr Skrijel's house was broken into in October, the Chairman of the Victorian Branch of WBA has twice had his car tampered with in early November and a member of Law Watch (another Association which has been calling on the Minister of Justice to implement Mr Quick's recommendations) believes that his house has been under surveillance. The WBA is monitoring this situation closely.

Victoria

Meetings

The Victorian Branch has been holding meetings every two weeks and has also started organising regular social events.

Other news

Of serious concern to the Branch was the arrest of a member while she was sitting in the public gallery in the County Court to provide support to another WB who was defending charges. She was arrested because she refused to give court security staff her address because she feared police harassment! Another member of the Branch was followed when he left the courtroom. Police corruption in Victoria is currently receiving a great deal of media attention. According to members of the Branch this is only the tip of an iceberg.

The Department of Criminology at Melbourne University is holding a conference on 17 November titled *Whistleblowers Protecting the Nation's Conscience.* Senators Jocelyn Newman and Christabell Chamarette will be speaking, as well as a number of academics and interesting debate is expected on all recent developments in Australia.

Updates on the call for a Royal Commission into the NCA in relation to the *Skrijel* matter

The Federal Government commissioned an inquiry into this matter (refer to previous newsletters) by Mr David Quick, QC who, in April 1995, recommended a Royal Commission into the NCA. Mr Quick stated in his report that "there is substantial evidence upon which it is reasonable to base a strong suspicion that evidence was fabricated in order to incriminate Mr Skrijel on serious criminal charges". The Federal Minister for Justice, Mr Duncan Kerr, ignored this recommendation and referred the matter back to the Victorian Ombudsman, who does not have the power to investigate the NCA.

A number of WBs have recently written to Mr Kerr requesting that he implement Mr Quick's recommendations and sets up a Royal Commission into the NCA. So far this has been met with gobbledygook responses and the Victorian Ombudsman is still considering whether or not to pursue any further investigation. The Victorian Branch has recently received a letter from Mr Kerr stating that he will not enter into any further discussion on the matter.

The Acting NSW Chief Justice, Michael Kirby has referred the matter to the International Commission of Jurists in case it feels it can become involved.

Tasmania

Since the Federal Government responded to the issue of whistleblowing on 27 October, the ALP and the Government in Tasmania appear to have been trying to upstage each other with their response, each having proposed their own legislation. The ALP had already carried out a certain amount of research and it was reported in the media that this had included broad community consultation. We do not know who they consulted with but they forgot to speak to Isla McGregor who is both the WBA's Tasmanian representative and a vice president of the WBA!

The ALP had already organised for students in the law faculty of the University of Tasmania to draft legislation and whilst this does not include the right for a WB to make public comment, it does cover the private sector, which the Government has yet to do. The ALP has made the comment that "while the proposed federal legislation is a good start, Labor in Tasmania believes state legislation must go further

The plan

In the beginning was the plan.
And then came the assumptions.
And the assumptions were without form.
And the plan was completely without substance.
And darkness was upon the face of the workers.
And they spake unto their marketing manager, saying,
"It is a pot of crap and it stinketh."
And the marketing manager went unto the strategist and sayeth,
"It is a pile of dung, and none may abide the odor thereof."
And the stategists went unto the business manager and sayeth unto him,
"It is a vessel of fertilizer, and none may abide its strength."
And the director went unto the vice president and sayeth,
"It contains that which aids plant growth, and it is very strong."
And the vice president went unto the senior vice president and sayeth,
"It promoteth the growth, and it is powerful."
And the senior vice president went unto the president and sayeth unto him,
" This powerful new plan will actively promote the growth and efficiency of the company."
And the president looked upon the plan and it saw that it was good.
And the plan became policy.
(Anon.)

and be much tougher". There is at least some hope while both major parties in this State appear to now have committed themselves to the issue that any resultant legislation might incorporate the best bits from each party's proposed legislation. This would of course best serve the public interest which it would be nice to believe both the Government and the Opposition were thinking about.

For the last five years Tasmania has been the only State with a community based campaign to amend the provisions of the State *Public Service Act* to allow public servants the right to comment on Government policy and practice. (USERP) United Scientists for Environmental Responsibility and Protection was the original professional association/community group which started this campaign. Paul Erhlich, is in Australian at present talking about suppression of environmental scientists. Look for news on this in *New Scientist* out soon.

Western Australia

Commission on Government

Public hearings were conducted in September on the issues of whistleblowing and corruption at which some members of the WBA spoke. In October the DPP indicated to the WA Commission on Government's (COG) inquiry into "WB protection and the adequacy of the Official Corruption Commission (OCC)", a profound lack of confidence in WA's anti-corruption body – stating that it was "almost totally ineffective, had achieved very little, offered inadequate protection for WBs and the sooner it was scrapped the better". His comments were backed up by the Chairman of the WA parliamentary inquiry into the police force. There are serious concerns being expressed in these hearings of unethical, verging on criminal, activity in a vast majority of government departments and warnings that the community had ignored the recommendations of the WA Inc. royal commission at its peril. Three years after the royal commission recommended a new agency to replace the inadequate OCC, no new agency is in sight and there is no sign that the public service has learnt any lessons from this commission.

The COG conducted some hearings in camera in October to take evidence from "whistleblowers afraid to speak in public". It is a rotten indictment of Australian society that people live in fear of telling the truth and of speaking freely.

It seems rather hypocritical of Premier Richard Court to criticise Labor politicians for ignoring the findings of the Easton royal commission when he has done precisely the same thing with some proposals of the WA Inc. commission.

In an article titled "Striking a blow for democracy" in the *West Australian* during October the following comments were reported: "the man who is supposed to oversee the open and accountable management of WA's public service, Public Sector Standards Commissioner, Mr Blight, told the COG that the leaking of information in the public interest is 'repugnant' and he emphasised the need to punish mischief-makers. Such a view by a senior public servant reveals the absolute necessity for open and accountable government in WA. The culture of secrecy and impropriety that exists in this State needs to be broken. The community has a right to know what is going on. What are these people scared of? It is high time our politicians and bureaucrats realised that open and accountable government is about democracy for the people of WA – the people they represent." □

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