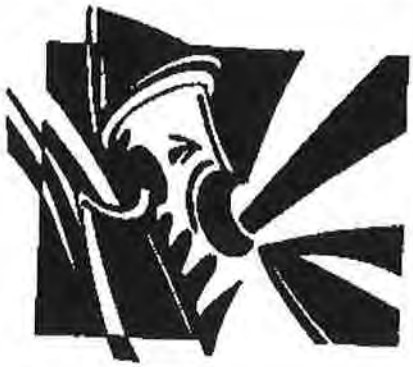
"All that is needed for e il to prosper is for people of good will to do nothing." Edmund

The Whistle



JANUARY 1997

NEWSLETTER OF WHISTLEBLOWERS AUSTRALIA INC

Box U129, University of Wollongong, Wollongong NSW 2500

IN THIS ISSUE

CONTRIBUTIONS PLEASE

Articles, letters, cartoons or illustrations dealing with any aspect of whistleblowing will be considered for publication. Address material to: The Editor, c/- Box U129, University of Wollongong, Wollongong NSW 2500, or by e-mail to: *patrimac@comcen.com.au*. Please submit written material on computer disk or typewritten and double-spaced.

All expressions of opinion are published on the basis that they are not to be regarded as expressing the official opinion of Whistleblowers Australia Inc. unless expressly stated

FROM THE NATIONAL PRESIDENT

Bureaucracy and whistleblowing

Not long ago I read a stimulating and disturbing book by Zygmunt Bauman entitled *Modernity and the Holocaust*. It is an analysis of the Holocaust – the mass extermination of Jews and other peoples by the Nazis – and how it relates to social institutions in modern society. Bauman believes that the Holocaust has profound implications for our understanding of society, but its study has been relegated to a few specialist areas.

The term "modernity" refers to characteristics of society that have developed only in the past few hundred years, including bureaucracy, rationality, science and, more generally, the separation of ends from means. For example, some scientists may work on solving particular puzzles involving reaction rates that are important for modelling the dynamics of nuclear explosions. The scientists work on the way to solve the problem, namely the means. The government and weapons lab administrators decide how to use the research, namely the ends.

Bauman's argument is that bureaucratic rationality was one of the essential factors that made the Holocaust possible. Hitler's goal was to remove the Jews. Various means were tried, such as emigration, but when these failed extermination was the "logical" conclusion, given the premise. The efficient and compliant German bureaucracies carried out the required tasks to reach the "final solution".

The usual explanation of the Holocaust is that it was either a reversion to barbaric behaviour or as something that only related to the Jews. Bauman says, to the contrary, that the Holocaust was made possible by precisely those features of society that make it "civilised". These features remain today.

The "ideal" bureaucracy is highly efficient, with workers doing their tasks efficiently and reliably. The goals of the bureaucracy are set by others, such as government, owners or top management. The ideal bureaucracy is like a well-functioning piece of equipment. The controller decides how to use it and the machine responds. In the jargon of social science, bureaucracy is a "purposive-rational system." The bureaucratic organisational form, with its hierarchy, division of labour and standard rules, is found throughout government, industry, churches, trade unions and political parties.

A large fraction of whistleblowers are employees in bureaucracies. By speaking out, they challenge business-as-usual inside the organisation. There are at least two types ☞

(Continued from page 1)

of bureaucratic whistleblowing.

(1) *Procedural whistleblowing.* The target here is improper procedures, such as faulty record keeping, neglect of duties, diversion of resources for private purposes, false claims, misuse of money, favouritism, stealing, bullying, blackmail and the like. Some workers are not doing their jobs properly or are actively subverting the aims of the organisation. Procedural whistleblowing exposes the problem that the bureaucracy is not working like it is supposed to, that it falls short of the purposive-rational ideal.

(2) *Goal-related whistleblowing.* The charge in this case is that the organisation's goals or purposes are inappropriate. For example, a pharmaceutical company could be challenged because it puts the pursuit of profit above public safety, even though it obeys all laws and regulations.

Many bureaucracies seek their own survival above all else, even at the expense of their original goals. Goal-related whistleblowing can challenge bureaucratic elites to pursue the original, formal stated goals of the organisation.

Both of these sorts of whistleblowing are important, and often they are combined. The message from Bauman is that challenges to procedural shortcomings are not enough, and even bad, if the goals are wrong. The German bureaucracies mounted a program of exploitation and extermination that was far more deadly than any sort of spontaneous anti-semitism could have been.

Jews were identified, categorised, sent to work camps and death camps. Detailed records were kept of ancestry, belongings, labour output and so forth.

It is possible to imagine procedural whistleblowers in Nazi Germany who pointed out that some categories of Jews were being given special treatment, that goods produced by slave labour camps were being diverted for private use, or that there were rorts associated with purchase of chemicals used in the gas chambers. Procedural whistleblowers might expose those who protected Jews, such as Oscar Schlindler. Since there was massive corruption in Germany, no doubt such whistleblowers existed.

By contrast, goal-related whistleblowers would have challenged the extermination program itself. They also might have tried to gum up the works, to make the bureaucracies less efficient in their deadly business.

The lesson from Bauman is that we need to pay at least as much attention to the goals of bureaucracies as to their methods. But challenging goals is especially difficult, since there is no formal way to do so. The procedural whistleblower at least has the option of appealing to rules and approaching appeal bodies that are supposed to administer justice (even though they often fail to act against corruption). The goal-related whistleblower has the more overtly political task of challenging the fundamental direction of the organisation.

In countries occupied by the Nazis, there were many dissidents – but not enough. The tragic fact is that the leaders of the most influential institutions – churches, corporations, scientific organisations – did little or nothing to oppose Nazis plans. (An excellent account of non-violent opposition to the Nazis is given by Jacques Semelin in *Unarmed Against Hitler*.)

Some of the problems with bureaucracies and how to go about challenging them are covered in a new booklet entitled *Challenging Bureaucratic Elites* written by three of us in the group Schweik Action Wollongong. If you'd like a free copy, let me know.

BRIAN MARTIN

"Information is the lynch-pin of the political process, knowledge is quite literally power. If the public is not informed, it can not take part in the political process with any real effect."

Tony Fitzgerald, Queensland's Royal Commissioner

WBA contacts and meeting details

Australian Capital Territory

❑ Shane Carroll 06 231 2498.

New South Wales

Central West (Forbes, Orange, etc)

❑ Dick Lodge (068) 51 1593.

Goulburn

❑ Rob Cumming: 018 483 155.

Sydney

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

❑ General meetings are held on the first Sunday of each month begining at 1.30 p.m., preceded by eats (e.g. sausage sizzle) at 12.30 p.m., and followed by coffee and bikkies etc.

❑ Sharing and Caring meetings are held every Tuesday begining at 7.00 p.m.

❑ President: Cynthia Kardell, 9484 6895; secretary: Alex Tees, 014 415 835.

❑ NSW Committee e-mail address: *100254.1467@compuser e.com*

❑ Phone 365 1723 or 281 9743.

Wollongong

❑ Brian Martin: 042 213 763.

Northern Territory

❑ Phillip Nitschke 089 322 500.

Queensland

❑ General meetings of the Whistleblowers Action Group (which has strong links with WBA) are held on the first Tuesday of each month commencing at 7.30pm.

❑ Greg McMahon, (07) 3378 7232 a/h

South Australia

❑ Jack King 08 278 7853.

Tasmania

❑ Meetings are held in Hobart the first Sunday of each month at 1.00 p.m.

❑ Isla McGregor 002 391 652.

Victoria

❑ General meetings are held every fortnight on Sundays at the Unitarian Church, 101 Grey St, East Melbourne, begining at 2.00 p.m.

❑ Peter McCartney, (018) 171714.

1996 - An attempt to review the year

Successes

WBA now has active branches in South Australia and Tasmania thanks to the efforts of Matilda Bawden, Jack King and Isla MacGregor. We have also have been contacted by people in Cairns and the Northern Territory who want to start branches – let's hope the momentum keeps up.

In June we held a successful two day conference in Melbourne (*Beyond Whistleblowing – Towards A Culture of Dissent*) with up to 100 attendees and much media interest. Thanks again to the Victorian Branch and especially Kim Sawyer for making this happen.

In August the NSW Branch organised a "Celebration of Whistleblowing" an evening of music and words which inspired every one who attended. Speakers included John Hatton (now NSW Branch Patron), John Millard, Quentin Dempster and Dorothy McRae McMahon.

In December Isla McGregor organised a "whistleblower" award ceremony in Hobart which attracted front page coverage in the Hobart *Mercury*.

We now have a one page brochure which describes the organisation and sets out its goals. This is being distributed throughout the community but not nearly enough. We also have a pamphlet on defamation and *The Whistle* has continued to be issued roughly once every two months.

During the year WBA has been contacted by many academic researchers, reporters, unions and by well over 300 individuals seeking advice and assistance. We have even been asked for advice from the Federal Ombudsman, the ABC and the NSW Police Service and have managed to put submissions in to a number of parliamentary and other inquiries, e.g. NCA, PD Act (NSW) review, ICAC, Wood Royal Commission, WA Commission on Government.

An inquiry is being held into the CJC in Queensland. WBs are actively involved in giving evidence and have been provided with legal assistance.

We now have international links with a UK organisation and a site on the Internet which has opened up enormous potential for more links.

The Federal and NSW Ombudsman have both produced annual reports which have criticised complaint handling mechanisms and attitudes to the Freedom Of Information legislation in the public sector.

The NSW Ombudsman and Auditor General have both written reports which have specifically criticised the treatment of WBs – the Ombudsman making the comment 'the title "whistleblower" can and should be worn with honour'.

The AGM was held in Sydney in December and was well attended. In a first, NSW Police Commissioner Ryan addressed the meeting.

There is now an international campaign to gain an amendment to the ILO to make it an offence to discriminate or victimise a person who has made a public interest disclosure.

In SA, WBs have taken a very proactive approach to exposing problems with WorkCover by distributing leaflets pointing out deficiencies and urging dissatisfied claimants to bring their concerns to the WBA.

Goodness we'll become part of the establishment if we don't watch out!

Lastly, but most important of all, in no specific order and at the risk of offending those I don't name, a few individuals deserve special mention:
John Millard – for exposing compromises to editorial independence at the ABC
Quentin Cook – for exposing electoral fraud at the Post Office union
Mick Skrijel – for exposing serious problems at the NCA
Greg Malouf – for exposing fraud in the Commonwealth Bank
Catherine Clifford – for exposing mismanagement at SBS
Karl Konrad – for exposing corruption in the Victorian Police
Ray Hoser – for writing books exposing corruption just about everywhere but specifically in the NSW Parks and Wildlife Service
Adele Horin et al – for exposing serious mismanagement in the Department of Community Services and extensive institutional abuse of the disabled, mentally handicapped and elderly
Alastair Gaisford and **Shane Carroll** – for exposing paedophiles and mismanagement in the Department of Foreign Affairs and Trade
Matilda Bawden – for exposing the failures of the State machinery (SA) to administer the WB Act
John Hatton for making the most of

Whistleblowers Australia National committee December 1996

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Chair of SA branch
Jack King
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Chair of NSW branch
Cynthia Kardell
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a unique position as an independent MP and in making whistleblowing an art form.

Deborah Locke for persisting, with effect, in the face of overwhelming odds, against corrupt NSW police.

Ken Jurette and **Deborah Locke** for successfully reaching a settlement with the NSW Police at the Anti – Discrimination Board. (Ken – racial harassment of Aborigines; Debbie – sexual harassment.

Tony Grosser – for exposing police corruption (SA) (the harassment of Tony has been the most extreme and serious example of State harassment known to the WBA)

Christina Schwerin – for exposing local government and police corruption (Vic)

David Obendorf – for exposing the decline in animal disease surveillance

Philip Nitschke – for daring to speak against the oppressive Australian Medical Association and other opponents of voluntary euthanasia and for acting on behalf of those who wish to end their lives with dignity

Jim Regan – for his ongoing campaign for safer public transport

Andrew Allen – for all his work on behalf of victims of medical malpractice and exposure of failings in the Health Care Complaints Commission

Chris Pittaway – for exposing corruption within the ICAC

Kevin Lindeberg – for exposing corrupt practices of government with the shredding by the Queensland Cabinet of vital documentation

Gordon Harris – for alleging corruption in the Queensland Police Service

Patrick O'Connor – for his ongoing campaign against the Department of Corrective Services in Queensland over drug use in prisons

David Rindos – for exposing mismanagement at the University of Western Australia. Sadly David, aged 49, died at the end of 1996. There are many who feel that his death was due in part to the immense stress that he suffered during his long battle.

And finally, to **all of us** – for never giving up!

Failures

So far the Howard Government has made no move to implement whistleblowing legislation despite pre-election promises to do so. In fact its actions in relation to changing the unfair dismissal laws, seeking amendments to the High Court decision on our implied rights to free speech, setting up a "behind closed door inquiry" into allegations of paedophilia in the Department of Foreign Affairs and attacks on the budgets of the ABC, Commonwealth Ombudsman and Legal Aid have not given me much hope that we are moving towards more open and accountable government. Attitudes towards aborigines and human rights abuses overseas, and attempts to override the Northern Territory's Euthanasia legislation have also not shown that it has much of a commitment to human rights.

To date the legislation in South Australia and New South Wales, to the extent that it has been tested, has proved to have been an absolute failure in providing any protection for WBs. In one sense, as there has now been so much media coverage about what happens to WBs, this could have acted as a deterrent to many who might have considered blowing the whistle. If anything, the environment is currently such that, with so many people in fear of losing their jobs, 'whistleblowing' is more risky than ever. In NSW we get calls every week from people who have made Protected Disclosures and who have subsequently either lost their jobs or have had serious problems at work. The complete failure of the ICAC to take any action against a person who has complained of detriment after making a Protected Disclosure is a disgrace. Mr O'Keefe's attitude that these situations constitute "industrial" matters and are therefore nothing to do with ICAC has probably sent out a message to employers that the NSW Act can be ignored and that it is OK for them to continue devoting their resources to trumping up charges against those who have made disclosures. The consistency with which employers allege WBs are guilty of inefficiency, send them to psychiatrists, restructure the workplace so that only the WB no longer has a job, transfer WBs, conduct biased and incompetent internal investigations, spend fortunes in legal costs to get rid of the WB and subject WBs to internal investigations is so predictable I can tell people their stories before they've told me!

> Hope for a miracle. But don't depend on one
>
> *Talmud*

Although there has been a certain amount of media coverage of problems with investigative bodies ICAC, CJC, NCA, AFP, etc. (which could to some extent be regarded as a success) as yet little if anything has been done to improve things – except of course to conduct more 'inquiries'!

The ethically challenged

Finally, tribute should also be paid to the 'ethically challenged' without whom we could not exist and amongst whom we should name:

The Department of Foreign Affairs and Trade for providing safe haven for alleged paedophiles and making possible a couple of substantial victories for Alastair Gaisford

Mr Barry O'Keefe for losing his way so spectacularly as revealed by the ICAC's own internal WB and for finally confessing what we have always known – he does not consider the protection of WBs to be part of his brief

Vacik Distributors for attempting to ban books by Ray Hoser which detail corruption in the NSW Parks and Wildlife Service and to the person/s who orchestrated the removal of Hoser's Internet site

The Victorian Police Service for dismissing Karl Konrad

The Federal MPs for using a so called exercise of conscience to curtail States rights

All those who have attempted to stop people from speaking out on behalf of victims of institutional abuse

The Commonwealth Bank for stopping us from reading Hansard

Shell, BHP and **McDonalds** for their actions against environmentalists and the **tobacco companies** for their actions against those who are acting in the interests of public health,

and to all those who enable us to continue with our work.

SOAPBOX: Whistleblowing policies which are not encouraging

The need for an organisation to implement complaint handling procedures is really an indictment on management who have failed to create an open, efficient and effective workplace. Without a genuine commitment by management to identify problems and resolve them, implementing WB policies which focus mainly on the support of the complainant becomes a bad joke. It is doomed to fail.

I recently had cause to reflect on this when I attended two committees

which have been set up to look at developing WB policies, at the ABC and at the NSW Police Service. Matters that have come up for discussion include how to deal with:
malicious and frivolous complaints
stress claims
complainants who 'did not come with clean hands themselves'
what constituted a 'public interest disclosure' and a 'grievance'
whether the WB should be rewarded or publicly recognised.

Sadly no attention was given to ensuring that complaints would be properly investigated. For example, ensuring the competence of the investigator, unbiased and speedy investigations, consequences for the perpetrator of alleged wrongdoing, publicising these consequences and systemic changes to ensure that the problem could not occur again or elsewhere.

Also conversations did not focus on any of those things which currently discourage people from coming forward. For example, the current 'culture of compliance' which is induced by the knowledge of previous WB experience, the threats posed by defamation and breach of confidentiality actions, employment contracts which prohibit employees from speaking publicly, fears for their jobs, doubts about our rights to free speech, perceptions of an unapproachable, 'closed' management, etc.

Given our adversarial legal system (refer Evan Whitton's article elsewhere in this *Whistle*) which effectively says it can be proper to attack witnesses in defending the guilty, I should not be surprised at the seemingly negative approaches to adopting WB procedures but I am.

It seems to me that if management genuinely want people who have concerns about any sort of wrong doing to come forward this will not be encouraged if a complainant continues to be frustrated by firstly having to work out whether their matter is a 'disclosure' or a 'grievance' and is not malicious or frivolous, and secondly by the knowledge that they may end up on stress leave, that the matter may not be looked at in a timely way and by a lack of knowledge about how the complaint will be resolved and whether anything is likely to change.

This is of course exactly how WBs are created in the first place. I think managers and WBs need to go back to the drawing board. Perhaps we should consider changing the name of our organisation (which also focuses on the WB) to something like Action Against Ethically Challenged Organisations or Action Against White Collar Criminals.

I believe that unless there is a genuine commitment to resolve each and every complaint to the complainant's satisfaction, and with the complainant's cooperation, all that such policies will create is dissatisfied complainants who will continue complaining elsewhere.

My message to managers is 'fix the problem' – then you won't have to deal with WBs.

Estimates Committees

Readers might like to take advantage of the annual opportunities presented by estimates committees which provide a forum for serious questions to be asked of Government departments and senior bureaucrats about expenditure and waste. In NSW these committees will be sitting in March so there is still time to think up some pertinent and probing questions as to exactly how public money has been spent (wasted?).

WBA's National Media Contact list

Isla McGregor is producing a contact list for the media which is to include names of people who are willing to speak publicly on whistleblowing in general and/or on specific cases or issues. Please could anyone who is interested in being on this list provide Isla (002 391 652) with their name, address, phone numbers Email, fax, etc and details of what they are willing to speak about (please try not to make this not more than six words)

Fundraising stickers

We still have a number of stickers to sell at $3 each. These are fairly eye – catching, red and white writing on a black background which say "whistleblowers our right to know".

International Links

Some individual members have linked up on a number of issues with members of Freedom to Care, a UK organisation which has objectives which are similar to those of WBA. FtC have joined us in our campaign to amend the ILO on human rights to outlaw the discrimination of an employee who makes a public interest disclosure. We are trying to gain the support of unions both in the UK and overseas, so readers with union contacts could help by bringing this to the attention of their unions.

Geoff Hunt from FtC recently wrote to us suggesting we should consider more international campaigns targeting international organisations. Anyone interested should contact Brian Martin on 042 213 763. ❑

LESLEY PINSON

How To Get More Effective Media, More Often

11 Powerful Secrets Re ealed By Alan Knight, Director of the Centre for Independant Journalism UTS, to 12 Whistleblowers at the media workshop on Sun 15 Dec 96.

He guaranteed the "Dirty Dozen" would expose, discredit & terrorise the cancer of society if they simply follow the rules that have been tried & tested.

NOTE: Do not communicate with the media until you have completed:

Step 1. Read the basic material & confirm its integrity.

Step 2. List the main points (from the readers point of view) on shuffle cards: a. Proximity. b. Human Interest & its consequences. c. Conflict. d. Action. e. Timeliness. f. Prominence. e. What Action should the reader take? (NM's comment) (Feel-good stories don't get a run)

Step 3. Test the readers/audience. Give them the shuffle cards to prioritise.

Step 4. Highlight the main point.

Step 5. Verbalise whilst tape recording to tighten up.

Step 6. Thread the story (shuffle cards) together, using simple language & the following format.

The Introduction Should Attract Attention.

Highlight the salient point of the story. Give the angle. Make 1, 2 or 3 key points. Be informative. Set the tone of the story. Be lively.

The Context carries the auxillary information.

Quotes: Use if possible to personalise & give credability.

Details of Action You Want The Reader To Take.

Step 7. Use short sentences (17 words). Use short paragraphs (3 sentences).

Use double space between paragraphs & generous margins.

Step 8. A good press release is like a good sauce. Continue to reduce & clarify.

Step 9. Let it rest. Then rewrite to reduce & clarify again.

Step 10. Note: Press Releases should NOT exceed: Print, 1 page (300 words approx); Electronic, 140 words.

Step 11. Alan Knight said "Having developed your Press Release.... Print influences electronic media to run with stories. The Journalists on the *Sydney Morning Herald, Age & Courier Mail* have less NEWS to

Blowing the whistle on the adversary legal system

By EVAN WHITTON

Whistleblowers are disadvantaged by adversarial procedures in courts and tribunals. In "Truth — The First Casualty" *(The Australian, 9/11/96)* Evan Whitton compared adversarial and inquisitorial procedures when lawyers attacked parliamentary privilege following the suicide of a former judge, David Albert Yeldham, on November 4, 1996.

Lawyers may overlook — or perhaps hope we do not notice — that parliamentarians' "abuse" of their privilege does not begin to compare with the enormity of lawyers' abuse of THEIR privilege. Lawyers are obliged to follow a client's instructions even when they know he is guilty; a lawyer, one year out of law school and not elected by anyone to anything, has an absolute privilege to make the most monstrously false assertions about the victim.

Julia Griffith, a psychologist, noted in *The Sydney Morning Herald* in December a case in which a man, who had already been imprisoned for child sexual assault, got off two charges of rape against a girl neighbour when she was 13 and 15. Griffith said the girl, now 17, was subjected to a "week-long assault" in the witness box and "had nightmares afterwards". His lawyer "called her character into question" but the jury was not allowed to hear character evidence in her favour, or evidence of his character as revealed by the pattern of his previous behaviour.

"The adversarial system does not elicit the truth in these cases," Griffith said. The inquisitorial solution, as used by Justice James Wood at his Royal Commission, will be obvious to all except lawyers and criminals. The Judge himself seeks the truth by questioning witnesses in a neutral or sympathetic way; lawyers whose task is to obscure the truth are largely kept out of it.

(The European term, "inquisitorial", carries a deal of baggage but there is no cause for alarm: it merely means "investigative". It is an examination into the truth by a judge with powers to question everyone who can help, notably including the suspect, and to ignore rules of evidence invented by English judges and lawyers to suppress relevant evidence, and hence to suppress the truth.)

It may appear that Mr Yeldham could put up with rumour, but that he feared the truth. But that is what the inquisitorial system is about; it is why, when we need to find the truth about some grave social problem, such as police corruption or paedophilia, we have to jettison the adversary system and resort to an inquisitorial system.

Unfortunately for the lawyers, having gone off half-cocked on parliamentary privilege, they apparently felt unable to take what may have seemed a golden opportunity to mount yet another attack on inquisitorial methods, and the threat they pose to the adversary system, and hence to lawyers and their crooked clients , if any.

The NSW Bar Association famously excoriated another Royal Commissioner, Justice Phil Woodward, for stating the simple truth that Bob Trimbole was complicit in the murder of Donald Mackay at Griffith in 1977. It said it was "outrageous to the basic principles of British justice that a finding of guilt .... by a Royal Commissioner should be published to the world at large."

Exactly. The basic principle of the adversary system of British "justice" is that truth is not important. The adversary system is rather on the run at the moment, and not before time; statistics suggest that the guilty have about an 80 percent chance of getting off under that system, but only a 10 percent chance of escaping justice under an inquisitorial system.

Jeremy Bentham, lawyer and would-be law reformer, said more than 200 years ago a lawyer for a guilty accused is effectively an accessory after the fact. At the least, he proceeds with a reckless disregard for the truth that no respectable trade would tolerate.

In the classic adversarial defence of an accused who is guilty, his lawyer persuades the judge to use the rules to suppress relevant evidence; he shifts the goalposts from accused to victim; and he uses cross-examination, thuggishly if necessary, to confuse prosecution witnesses sufficiently to create a doubt. The accused meanwhile exercises his right to avoid cross-examination.

In inquisitorial systems, judges control the police investigation and the trial; in the adversary system, judges control the court but the lawyers control the trial: they decide what witnesses will be called and the evidence they will give.

His Excellency the Governor General, Gordon Samuels, former justice of the NSW Court of Appeal, told a seminar on *Rein enting the Courts* in December that the adversarial system is about winners and losers not about seeking the truth. What can be said of a system that gives control of a trial to people who are more interested in winning than in truth or justice?

In theory, the adversary system might be useful as a check on dubious members of the judiciary, e.g. Sydney magistrate Murray Farquhar, but such types are surely extremely rare. The defects of the system are surely so great as to make it desirable to replace it with an inquisitorial procedure. The defects may be summarised as follows:

1. It results in oppression of prosecution witnesses.
2. It increases fabrication by defence witnesses.
3. It obscures the truth from the community, i.e. the jury.
4. It takes control of trials away from judges.
5. It gives control of trials to lawyers who are more interested in winning than in truth and justice.
6. It causes paranoia in prosecution and defence lawyers.
7. It encourages defence lawyers to deceive the community, i.e. the jury.
8. It has a deeply "corrupting" effect on expert witnesses.
9. It increases the cost of trials.
10. It prevents the legal aid budget from being fairly distributed.
11. Imbalance in the skills of the lawyers tends to make a trial unfair to either the community or to the accused.
12. It allows defence lawyers to engage in legal thuggery on victims of crime, particularly women and children who are victims of sex crimes.
13. By definition, either the prosecution or the defence lawyer is in effect trying to deceive the jury.

The vast majority of lawyers (and judges) do not have the faintest idea of why, or even when, the adversary system was invented, yet they will blindly rush to the barricades to☞

CORRESPONDENCE

To:
Chairman
Senate Legal and Constitutional References Committee
Federal Parliament
Canberra, ACT

Dear Sir/Madam,

Please accept my apologies for being late with this very modest submission. I was not aware of the Committee before reading an article entitled "It's legal, but is it moral?" by David Marr in the *Sydney Morning Herald* on 21 December 1996. Time and few resources will of necessity limit our submission to the general points below.

Whistleblowers Australia would like to endorse the general sentiments and arguments set out in the article by David Marr. What with the recent decision by Canberra to drive down its contribution to legal aid, whistleblowers face even greater certainty of failure than before.

We believe the privileged position of big business litigants [include public bureaucracies for our purpose] is inherently inequitable and ensures that the private litigant [and whistleblower] is starved out of the process. Merit, truth, justice and public accountability do not get a guernsey. It is a sham.

Whistleblowers would like to see the entire area examined and reformed in order to address the inequality between business and private litigants.

Tax breaks should only be available if across the board and then based on merit [prospect of winning], ability to pay and public accountability issues.

Claims from business litigants only [for business brawls] should be pegged to some reasonable scale of costs.

Mediation should be preferred over litigation [between business litigants only].

The Courts should become the champions of truth and accountability and not simply the place for winners and losers that they presently are. Justice and human rights, not business, should be the motivation.

Whistleblowers is appalled by the prospect of continuing to subsidise [as taxpayers] the business litigant's decision to engage in expensive litigation and to use the publicly funded court system – and in the case of the whistleblower – to avoid public accountability.

Yours Sincerely,

CYNTHIA KARDELL
NSW PRESIDENT

REPORT FROM NSW BRANCH

I am happy to report that 1996 was a good year for the Branch. For example:

Weekly 'caring and sharing' meetings have been well attended with say 12-15 at any one meeting. Of the group say half could be described as a floating population from quite diverse backgrounds including [increasingly] private sector WBs. It is usually a late finish, before adjourning around midnight to the nearby trattoria for a hot chocolate and the more serious debates [about how to right the world].

NSW is poised to open an office to the public in 1997 in the old vestry of the Campbell St., Church in Balmain to provide administrative and information service to the group and [over time] a reference library of sorts.

FILL OUT THE SURVEY

With this issue of The Whistle you may find a survey on the Independent Commission Against Corruption. We urge you to take the time to fill out the survey form so that WBA can make a hard-hitting submission to the joint standing committees of Parliament.

At a public level our first annual 'Celebration of Whistleblowing' in August went off without a hitch. Guest speakers Attorney General Jeff Shaw and Police Commissioner Peter Ryan enlivened branch meetings. And Alan Knight from the Centre for Independent Journalism, schooled the group in ways to maximise the media.

The biannual parliamentary Committee on the ICAC provided a fitting finale to a year of public submissions and activities in the promotion of better systems and accountable management be it government or otherwise. Included were reviews of the *Protected Disclosures Act 1994*, AFP and NCA, Australian Broadcast Corporation and Police Royal Commission. Thanks are due to what Anne Turner [new National Treasurer] smilingly calls the rent-a-crowd: without which we are nothing.

NSW involvement in national WB projects like the AFP Inquiry [Mick Skrijel], NPWS matter [Raymond Hoser] and the Allen [once was Hunt] Inquiry into paedophilia in the DFAT [Alastair Gaisford] have been reasonably successful.

Perhaps the most satisfying was the revelation of extraordinary developments in the life and times of the ICAC. It has its own internal WB who has gone public. Bazza is reported to be apoplectic and unhappy – after all, bugger staff morale, it is not to be tolerated!

As the Chinese might say these are interesting times – and we have only just begun!! 1997 looks like it could be quite promising, so stay with it NSW.

Ciao.

CYNTHIA KARDELL
NSW PRESIDENT

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defend it.

Justice Geoffrey Davies, of the Queensland Court of Appeal, told the seminar in December: "The object [of criminal justice reform] is the maintenance of a fair balance between the interests of a person suspected or accused of a crime and the public interest in having criminals brought to justice. Whether such a balance is being maintained is a subject which lawyers almost never discuss ... There is now, in my view, an imbalance in favour of accused persons and against the interests of the community."

He said there appear to be bodies capable of pursuing the task of reducing adversarial procedures in the civil area. "But," he said, "I can see no sign of criminal justice reform. Unless both are pursued, courts, lawyers and government will fail to fulfil the legitimate expectations of the community we serve." ❑

(Some of this material deri es from an address by E an Whitton to the annual conference of NSW magistrates in July 1996: Wood Re isited: A Comparison of [English] Common Law and [European] Ci il Law Approaches to Criminal Justice.)

The NSW Protected Disclosures Act (PDA).

This is the first of a series of articles by ALEX TEES concerning the existing and proposed Protected Disclosures Legislation and Laws in all States and Territories.

Late last year the NSW Parliamentary Standing Committee on the Ombudsman recommended that the Act should be amended to include private sector organisations contracting with the NSW Government and its agencies and that a Protected Disclosures Unit should be set up within the Ombudsman's Office to assist whistleblowers and internal witnesses/informants.

While these changes are welcome they arguably do not go far enough.

One of the glaring weaknesses of the Act is that it does not cover persons and employees in the Private Sector. Some may remember that it was largely whistleblowers in the private sector who made key disclosures concerning improper tendering and subcontracting for work from the State Rail Authority on the North Coast and also during the NSW Royal Commission into the Building Industry. It is at least arguable that some form of appropriate employment protection should be afforded to whistleblowers in the Private sector. The proposed amendments may not entirely cover such situations nor would it cover organisations granted substantial sums of public money.

Another of its deficiencies is that it makes no provision for financial and legal aid to be given to whistleblowers by the NSW State Government so they can protect their legitimate employment interests in the relevant Industrial Courts or so they can be adequately represented at official Inquiries such as Royal Commissions, the ICAC, the NSW Crimes Commission etc or other legitimate protection purposes such as pursuing Defamation litigation or even obtaining apprehended domestic violence orders for their physical protection.

Where Employment is Threatened.

It is further submitted that in circumstances where an employee who has made a protected disclosure has had their employment threatened or been sacked that the Act should be amended to allow such an employee to make an urgent application to the NSW Industrial Relations Commission either to be reinstated or to have their employment situation preserved. Perhaps arguably in such situations no Legal representation or costs should be allowed with an emphasis on fast informal resolution of matters with no rules of evidence applying and the Commission being allowed to inform itself in any matter it thinks fit.

WBA is keen to hear from any of its members and readers of the *Whistle* as to their further views on the Act and its' effectiveness or otherwise together with any amendments which may be suggested.

An expurgated copy of the NSW PDA appears below for the information of members.

The objects of the Act are stated to be:.

"Object 3. (1) The object of this Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector by: (a) enhancing and augmenting established procedures for making disclosures concerning such matters; and (b) protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures; and (c) providing for those disclosures to be properly investigated and dealt with." Unfortunately the Act also states; " Section 3 (2) Nothing in this Act is intended to affect the proper administration and management of an investigating authority or public authority (including action that may or is required to be taken in respect of the salary, wages, conditions of employment or discipline of a public official), subject to the following: (a) detrimental action is not to be taken against a person if to do so would be in contravention of this Act; ... ".

> "... some form of appropriate employment protection should be afforded to whistleblowers in the Private sector."

Arguably, the potential problem with this provision is that it obviously allows persons making disclosures to be retrenched or made redundant and in effect it puts the onus of proof on such persons to prove they are being made redundant by reason of their making a Protected Disclosure. It is submitted that the Act should be changed to place the onus on the employer concerned, rather than on the employee.] Another possible problem arises in the definitions section of the Act where "corrupt conduct" has the meaning given to it by the Independent commission Against Corruption Act 1988; The arguable problem with this definition is that it is too restrictive; the Court of Appeal has held that the existing ICAC Legislation in effect does not allow politicians/Members of Parliament/Ministers to be found corrupt within the meaning of the ICAC Legislation. (Refer to the Supreme Court case mounted by Messrs Greiner and Moore against a finding of corrupt by the ICAC in 1991).

Section 8 states:.

"Disclosures must be made by public officials 8.

(1) To be protected by this Act, a disclosure must be made by a public official:.

(a) to an investigating authority; or.

(b) to the principal officer of a public authority or investigating authority or officer who constitutes a public authority; or.

(c) to another officer of a public authority or investigating authority to which the public official belongs in accordance with an internal procedure established by the authority for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers; or.

(d) to a member of Parliament or a journalist.

(2) A disclosure is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of this section.

(3) A disclosure made while a person was a public official is protected by this Act even if the person who made it is no longer a public official.

(4) A disclosure made about the conduct of a person while the person was a public official is protected by this Act even if the person is no longer a public official. ".

Section 13 concerns Disclosures about investigating authorities:.

" 13. (1) Despite section 10, a disclosure by a public official to the Commission that shows or tends to

gate, and report, in accordance with the Independent commission Against Corruption act 1988 on any matter raised by the disclosure made to it that is of a kind referred to in subsection (1)."

It is submitted that word 'may' should be changed to 'must' in order that the Commission is directed to investigate every disclosure.

With respect to disclosures to the Ombudsman it is also submitted that The word "may" should be changed to "must" for the same foregoing reasons.

Section 14 concerns Disclosures to public officials.

"14. (1) To be protected by this Act, a disclosure by a public official to a principal officer of, or officer who constitutes, a public authority must be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers.

(2) To be protected by this Act, a disclosure by a public official to another officer of that public authority to which the public official belongs in accordance with an internal procedure established by the authority for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by the authority or any of its officers must be a disclosure of information that shows or tends to show such corrupt conduct, maladministration or serious and substantial waste."

It is further submitted that a Public Official should not lose protection by virtue of the fact that he/she fails to adhere to the internal procedure of his/her employer. Protection should not be lost by reason of the fact that there has been a technical deviation from a code conduct or some internally prescribed procedure.

Section 15 Concerns Disclosures made on "frivolous or other grounds".

" 15. An investigating authority, or principal officer of or officer who constitutes a public authority, may decline to investigate or may discontinue the investigation of any matter raised by a disclosure made to the authority or officer of a kind referred to in this Part if the investigating authority or officer is of the opinion that the disclosure was made frivolously or vexatiously.

(2) A disclosure is not (despite any other provision of this Part) protected by this Act if an investigating

Are are you interested in participating in planning and action on a national level?

Campaigns are possible in many areas. What is required is people to take initiatives.

Here is a preliminary list of members of the national committee members who are interested in national action/campaigning in particular areas. Contact them if you'd like to be involved. If you would like to be a contact for one of these areas, or another one, let any of us know.

- ❑ Whistleblower legislation: Greg McMahon, Alastair Gaisford, Cynthia Kardell
- ❑ Free speech for employees, specifically ILO III campaign: Isla MacGregor
- ❑ Defamation: Brian Martin
- ❑ Marketing (promoting awareness of WBA): Anne Turner
- ❑ Media: Alastair Gaisford, Lesley Pinson, Isla MacGregor
- ❑ Information provision (leaflets, articles, web): Brian Martin
- ❑ Police policy: Jean Lennane
- ❑ Funding: Lesley Pinson. ❑

Suppression Stories

By BRIAN MARTIN

Wollongong: Fund for Intellectual Dissent, 1997 ISBN 0 646 30349 X

In spite of the prevailing rhetoric of freedom, it can be risky to question the established way of doing things. Whistleblowers, dissidents and others who run foul of powerful interests are potential targets of attack. They are harassed, ostracised, threatened, reprimanded, transferred, censored and dismissed.

In *Suppression Stories* Brian Martin describes experiences and insights from years of studying and opposing suppression of dissent. The book covers patterns of suppression, the problem of defamation, peer review, formal channels, the role of media, difficulties in opposing suppression and advice for dissidents. It uses numerous case studies to illustrate suppression and methods of dealing with it. *Suppression Stories* provides a personal account of how to go about investigating and resisting suppression.

Brian Martin works as a social scientist at the University of Wollongong. He is the author of numerous articles and books in diverse fields including astrophysics, wind power, scientific controversies, strategies for social movements, participatory democracy, information technology and nonviolent defence. He has been active for many years in the radical science, environmental and peace movements. He became involved in suppression issues in the late 1970s, was lead editor of the book *Intellectual Suppression*, helped found the Network for Intellectual Dissent in Australia and in 1996 became national president of Whistleblowers Australia.

This book is available at no cost on the web at *http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/*.

Printed copies are available from: Fund for Intellectual Dissent, Box U129 Wollongong University, Wollongong NSW 2500 Australia. (Please use the form below.)

Brian Martin also can be contacted at: phone (042) 213763 work, (042) 287860 home; fax (042) 213452; e-mail *brian_martin@uow.edu.au*

All donations, royalties and surplus over costs will go to the Fund for Intellectual Dissent.

PLEASE SEND ME _____ COPIES OF SUPPRESSION STORIES, POSTAGE PAID, AT $20 EACH ($12 FOR LOW INCOME EARNERS).

I ENCLOSE: $_____. (make cheques to fund for intellectual dissent.)

NAME:_____

ADDRESS:_____

_____

tinue the investigation of any matter raised by a disclosure made to the authority or officer of a kind referred to in this Part if the investigating authority or officer is of the opinion that the disclosure was made frivolously or vexatiously.

(2) A disclosure is not (despite any other provision of this Part) protected by this Act if an investigating authority or officer declines to investigate or discontinues the investigation of a matter under this section.

(3) Nothing in this section limits any discretion an investigating authority has to decline to investigate or to discontinue the investigation of a matter under the relevant investigation Act."

There is arguably an inherent danger in this section as potentially it allows a public official to dispense with a genuine complaint/genuine allegations of corruption by merely asserting that a complaint is "frivolous or vexatious".

It is submitted that the decision as to whether or not a complaint/matter is frivolous or vexatious should only be with the ICAC or the Ombudsman.

Section 18 refers to "Disclosures motivated by object of avoiding disciplinary action " "18. A disclosure that is made solely or substantially with the motive of avoiding dismissal or other disciplinary action, not being disciplinary action taken in reprisal for making a protected disclosure, is not (despite any other provision of this Part) a protected disclosure."

Arguably the problem with this section is that it is not clear on whom the onus rests to prove whether or not a disclosure is being made to avoid disciplinary action.

It is submitted that the onus of proof in this matter should be on the employer.

Section 19 Concerns Disclosure made to a member of Parliament or a journalist; "19. (1) A disclosure made by a public official to a member of Parliament, or to a journalist, is protected by this Act if the following subsections apply.

(2) The public official making the disclosure must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part.

(3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom the matter was referred: (a) must have decided not to investigate the matter; or (b) must have decided to investigate the matter but not completed the investigation within six months of the original disclosure being made; or (c) must have investigated the matter but not recommended the taking of any action in respect of the matter; or (d) must have failed to notify the person making the disclosure, within six months of the disclosure being made, of whether or not the matter is to be investigated.

(4) the public official must have reasonable grounds for believing that the disclosure is substantially true.

(5) The disclosure must be substantially true."

This section should arguably make clear that Parliamentary privilege is not affected by this section. Traditionally people have been able to go members of Parliament without fear of sanction this might well entail a breach of parliamentary privilege. Despite later statements about this matter in the Act it is submitted that uncertain phraseology still makes this matter unclear.

It is further submitted that the necessity for first placing a matter before the Chief Executive of the Public Authority concerned should not apply to disclosures made to Members of Parliament. This is especially the case where allegations may or may not involve the conduct of senior officials of a public authority or indeed involve the Chief Executive Officer themselves.

The Waiting Period. It is submitted that the period of six months is far too long. The period should arguably be changed to one month or thirty days.

PART 3 of the Act concerns protection which may be available to Whistleblowers; " Protection against reprisals 20. (1) A person who takes detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for twelve months, or both.

(2) In this act, "detrimental action" means action causing, comprising or involving any of the following: (a) injury, damage or loss; (b) intimidation or harassment; (c) discrimination, disadvantage or adverse treatment in relation to employment; (d) dismissal from, or prejudice in, employment; (e) disciplinary proceeding."

In relation to Section 20 (2) (c) & (d); it is submitted that persons should be able to pursue cheap injunctive relief for a protective order in the Industrial Court. (For instance that they not be dismissed or demoted until there has been a hearing before the Industrial Court) . It is also noted that demotion is not specifically mentioned. Perhaps the definition of detrimental action needs to be revised in this regard.

Protection against actions etc.

21. (1) A person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure.

(2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the person.

(3) The following are examples of the ways in which this section protects persons who make protected disclosures. A person who has made a protected disclosure: . has a defence of absolute privilege in respect of the publication to the relevant investigating authority, public authority, public official, member of Parliament or journalist of the disclosure in proceedings for defamation . on whom a provision of an act (other than this Act) imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against the Act who is subject to

People can be divided into three groups: those who make things happen; those who watch things happen; and those who wonder what happened.

John Newbern

public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless: (a) the person consents in writing to the disclosure of that information; or (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so." Rights and privileges of Parliament "23. Nothing in this Act affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament." As previously stated in relation to the effect of Section 19, it would appear that the words "in parliament" purport to restrict the older traditional view of parliamentary privilege.

Notification to persons making disclosures Section 27 states:
"27. The investigating authority, public authority or officer to whom a disclosure is made under this Act or, if the disclosure is referred, the investigating authority, public authority or officer to whom the disclosure is referred must notify the person who made the disclosure, within six months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure."

The Review of the Act is mandated for after certain periods of time:
"32. (1) A joint committee of members of Parliament is to review this Act.
(2) The review is to be undertaken as soon as practicable after the expiration of one year after the date of assent to this Act, and after the expiration of each following period of two years.
(3) The committee is to report to both Houses of Parliament as soon as practicable after the completion of each review."

The above is only a selection of the provisions of the Act, views are sought as to possible alterations to it which may be warranted. ❑

Motions passed at Whistleblowers Australia Annual General Meeting 1 December 1996, Sydney

❑ **Return of a fraction of membership fees to branches**

Motion: One third of membership fees will be made available for return to branches on request and production of suitable receipts or invoices.

❑ **Policy on media releases, comment to media, etc**

Motion: Any member of the national executive can issue a media release or comment to the media. In normal circumstances, media releases should be checked first with another member of the executive, typically president, vice – president or director. In all cases, approval should be sought in advance from anyone whose name is given in a release. The same sort of policy should be followed by branches, with variations depending on branch structure.

❑ **Delegation of power to approve memberships**

Motion: The national executive will invite members to write concise position papers concerning delegation of power to approve memberships. Papers received will be circulated to all members, for example in an issue of *The Whistle*, with an invitation for members to make comments. The national committee will reach a decision about delegation on the basis of arguments raised and opinion expressed.

❑ **Arrangements for memberships, finances, record – keeping, contact with members, and other duties and activities by national committee members**

Motion: As soon as possible, a subcommittee consisting of the president, national director, secretary, and treasurer should establish a procedure to ensure that all memberships and finances are handled properly, expeditiously and in accordance with the constitution.

❑ **Official support for members**

Motion: The national executive will invite members to write concise position papers concerning whether WBA may, and as time permits should, communicate to relevant authorities and media official support for members when they appear reasonable, where the member is of reasonably long standing and where s/he has tried hard to get satisfaction without success for a considerable time. Papers received will be circulated to all members, for example in an issue of *The Whistle*, with an invitation for members to make comments. The national committee will reach a decision about official support for members on the basis of arguments raised and opinion expressed. ❑

Whistleblowers workshop 1 December 1996

Harmonious Relationships

Workshop Facilitators; Alex Tees and Michael Cottier. In Attendance; Alex, Michael, Cynthia, Val, Jim, Ross, Helen, Neville and George(?). Facilitators opened with two features for harmonious relationships:
1. Communication.
2. Agree to disagree.

Discussion ensued, opinions were given by all workshop members and focused on Caring & Sharing meetings and a new WB member's introduction to WBA.

At conclusion of the workshop Michael COTTIER gave a summary of the main points that appeared to be common among all participants in the workshop and there were six points:
1. Primary focus – whistleblowers.
2. Volunteers – executive and members.
3. Limited resources – do the best with what we have.
4. Caring & sharing – we do care about individuals, public interest and we do want to help.
5. Members – want/hope/would like some suggestion/guidance/comment on what best to do in their situation or are they on right track.
6. Executive members different skills – Insight, knowledge, experience, sense of responsibility, are key to success of introduction to WBA and Caring & Sharing meetings.

After summarising the workshop members all agreed to those main points and then time ran out. ❑

MICHAEL COTTIER

WBA'S position on financial and professional agreements between individual members

Concerns have been raised over recent months about financial and business arrangements between individual members. To clarify the WBA's position, the Association exists to facilitate members in providing **voluntary** support and assistance to each other as time, ability, common experience and energy permit (refer the WBA's Constitution). The WBA enters into no financial arrangement with its members other than membership fees. It does not involve itself in any other business or professional agreement between its members, and it bears no responsibility for such agreements. Members who enter into agreements with each other, e.g. members who act as solicitors, accountants, psychiatrists, advocates, etc. do so entirely independently of the Association.

WBA's office bearers act on a purely voluntary basis and earn no income from the WBA. In my view it would therefore be wholly inappropriate for any office bearer to use their position and/or the Association (either orally or on letterhead) when acting for a member with whom they have a private financial arrangement. This would leave the office bearer concerned open to an accusation of abuse of position and bias.

Where such an agreement has been made between an office bearer and an individual member, the office bearer must ensure that it remains a private matter and does not involve the WBA. It is always the best policy to adopt a position of complete candour and to avoid conflicts of interest.

Whistleblower censorship

In November and December 1996, two unsuccessful attempts were made to ban distribution and advertising of Ray Hoser's book *Smuggled 2: Wildlife Trafficking, Crime and Corruption in Australia.* Attempts to gain a media blackout on reporting of the legal action also failed. Ray described these events as "a victory for free speech and those who wish to expose crime and corruption in government".

Smuggled 2 documents the involvement of NSW National Parks and Wildlife Service (NPWS) officials in the illegal trade of Australia's wildlife and the attempts which have been made to silence WBs, including those from within the NPWS.

Ray Hoser, the WBA and a number of others have called for a Royal Commission into these allegations. Many allegations have been previously referred to the ICAC which did not pursue an investigation. Some individuals, after being disappointed with the ICAC's inaction, subsequently provided Ray with their information, since publication via his books seemed to be the only way to let the public know what was going on.

In November, within days of the first failed attempt to ban the book, Ray found that his Internet site and access had been removed. Ray has claimed that this occurred after his Internet provider had been threatened and that this constitutes the first case of Internet censorship in Australia.

There has been only limited reporting of these events in the mainstream media which raises suspicion that the media may also be concerned about threats of defamation.

It seems that publication of information in books, on the Internet and in pamphlets is often the last resort available for WBs to expose wrongdoing. But our right to know is seriously abused when those in positions of power use their seemingly limitless resources to restrict access to information.

Copies of *Smuggled 2* can be obtained from Kotabi Publishing, PO Box 599, Doncaster, Victoria 3108 for $25 per copy. *Smuggled [1]* and *The Hoser Files* are also available from the same address for $20 per copy. Postage is free.

Concerns about banks

For some years a number of WBA's members have had concerns about the banking sector. Due to demands from non State Bank customers, the Victims of the State Bank of NSW Association recently extended the activities of their Association and has changed its name to Australians for Banking Justice Association. Their objectives are to;
1. see the establishment of an independent body to hear and judge the cases of [their] members without the need to use the highly expensive and generally inaccessible legal system, and
2. establish an independent inquiry into the affairs and conduct of the banks and their officers who may be implicated in questionable behaviour, either on behalf of the bank or independently.

They have recently distributed a survey form to survey complaints and intend to use the results of this exercise to call for a Royal commission into banking.

Those with an interest in this area can reach the Association at ABJ, PO Box 7230, Bondi Beach, NSW 2026 and on 02 9365 1256 or fax 02 93654458.

Whistleblowers on stage

Katherine Thompson has written a play, '*Na igating*', about a whistleblower which will be premiering at the Queensland Theatre Company on 16 October. Performances continue in Queensland for the following three weeks and the play then transfers to the University of Melbourne Theatre Company from 11 November to 13 December. Katherine gained much insight from interviews with a number of WBA's members throughout Australia before she wrote the play.

The synopsis of the play states 'Bea Samson lives quietly with her sister, in the seaside town where she spent her childhood, a town that has always buried its mistakes. When she blows the whistle on a corrupt council employee [she informs her superiors that their consultant is taking huge kick – backs from an American consortium that is tendering to build a private prison] all hell break loose but it's Bea at the centre of the storm. She is promoted at work to a non – existent position, her boss is having a secret affair which undermines her every move and the local newspaper ends up a mouthpiece for the Council. Isolated and persecuted by the community, under siege in her home, in fear of her sanity, Bea fights to clear her name. But how far are her enemies prepared to go to silence her or is Bea her own worst enemy?' The play is 'a study of personal courage and moral conviction in the face of overwhelming odds.

Thank you Katherine for thinking we're worth writing about and for putting us in the spotlight! Phone 07 3840 7024 and 03 9684 4500 for your tickets. ❑

The Commissioner
Royal Commission into the NSW Police Service
Fax 02 321 6799
14 January 1997

Dear Justice Wood,

re: Pedophile Reference

In previous correspondence, we have expressed our satisfaction at the way the Royal Commission has operated, its support and encouragement of whistleblowers, and the impressive progress it has made in the daunting task of cleaning up the NSW Police Service. We have at other times raised difficulties experienced by some of our members, in particular the unfortunate outcome of the prolonged cross – examination of police whistleblower Debbie Locke. However in general we have felt that our concerns have been dealt with appropriately, and any such problems have not been repeated.

However the general satisfaction outlined above applies to the main reference of the Commission, the 'cops and robbers' section. Whistleblowers Australia has for some months shared the increasing concerns that have been expressed by state Labor 2

caucus and the general community regarding the pedophile reference. We believe there is now a widespread view that the Royal Commission has lost its way, in confining its more public activities to homosexual pedophiles who are overseas or dead. The more recent hearings on the late Justice Yeldham, while interesting and informative, also conform to this trend. (We note that his examination was conducted in private while he was alive.) Heterosexual child sexual abuse has received disproportionately little attention, and organised sadistic abuse/ ritual abuse/ satanic ritual abuse seems to have been largely dismissed. The Commission's examination of controversial issues such as memory must also be questioned, given its failure even to contact acknowledged international experts such as Professor John Briere, let alone take evidence from them in public hearings.

Our uneasiness about the direction and scope of the pedophile reference has been greatly increased by the examination of Dr Anne Schlebaum that took place on 29.10.96. Examination of the transcript, as advised by Ms Bergin, has reinforced our concern. The transcript appears as a sustained attack on Dr Schlebaum's credibility, at the rate of nearly one item per page, starting almost immediately and continuing for over 100 pages. A list of items is attached. While most of them would be valid as part of a broad debate on difficult and controversial aspects of child sexual abuse, the exclusive manner in which they were organised and presented in Dr Schlebaum's examination gives a most unfortunate impression that we feel would have been welcomed by the pedophile lobby. The overall effect is to discredit Dr Schlebaum as a therapist, an unfortunate outcome for her personally, but with the even more serious effect of discrediting her patients, and by implication any child who discloses sexual abuse, especially if the child is young, or the abuse has elements that are out of the ordinary or bizarre.

We have been unable to find an acceptable explanation for what occurred with Dr Schlebaum. Why was a therapist who has worked extensively with child sexual abuse victims, and was only too anxious to continue to assist the Commission, subjected to such a distressing and damaging experience, which so far any living pedophile has been spared? On the matters in Dr Schlebaum's letters to which the Commission took exception, surely a phone – call or letter of clarification and correction would have sufficed? How could the expenditure of taxpayers' money on a full day of public hearing on this possibly be justified, whereas for example the recent visit of investigators from the Belgian pedophile case, surely of far greater public interest and importance, has passed unremarked?

We would be grateful if you could give us an explanation, as soon as practicable. Pending that, and reassurance that other whistleblowers who try to assist the Commission on this reference will not be treated the same way, we are advising our members to withhold their cooperation and any further information until further notice. Members who have already given information on pedophilia in NSW, elsewhere in Australia, or overseas, to the Commission will be told they should not assume that any action has been or will be taken, and should actively seek other avenues to pursue their concerns.

We very much regret that this has become necessary. I should I think point out that our concern does not relate to what may have gone on in the Commission other than in public hearings, or what may or may not be in transcripts so far not reported in the media. It relates simply to the treatment of a whistleblower, the message that conveys about the possible treatment of others, and hence the direction and efficacy of the whole inquiry.

Yours sincerely,

JEAN LENNANE
VICE –PRESIDENT

Areas covered in questions by Ms Bergin to Dr Schlebaum on 29.10.96

Transcript page numbers in brackets, last digits only. [33520] Opening statement that the area of recovered memory, satanic ritual abuse/ sadistic ritual abuse/ pseudosatanic ritual abuse will be covered.

Implied characteristics of child victims in general:

– especially from 3 to 6 years, 'need to be able to use their imagination with comfort', fantasise, make up stories, have difficulty distinguishing fact and embellishment [530, 531, 536] – are likely to become dependent on therapists such as Dr Schlebaum and want to please her in any statements they make [538, 539]

– may feel they should make claims similar to those other children have made [564,565] – are involved in false allegations of sexual abuse to the Family Court [569, 570] 5 – would have to be publicly examined in the Commission if alleged pedophiles were examined; practical difficulties with 3 – year – olds' evi-

dence [604, 631]

Implied characteristics of therapists in general:

– work in an area where 'emotions run high' [612], 'areas of rumours, guesswork, gossip, assumption and emotion' [620] – deal with repressed/suppressed memories [588] – are likely to be 'burnt out', and may lack peer review and supervision [539, 540, 541] – include charlatans, struck – off professionals, and are likely to misuse books such as 'Courage to Heal', leading to false allegations [547, 550] – are likely to ally themselves therapeutically with the child, become advocates for their patients, thus losing objectivity and legal neutrality [542, 544, 551, 632], and be disturbed if an accused perpetrator is acquitted [553] – may not understand the legal importance of first disclosures [568], use techniques such as hypnosis leading to evidence being inadmissible [592, 593], and allow crosspollination of ideas between patients [593]

Negative characteristics of Dr Schlebaum as a therapist:

– qualifications, training, method of referral, hospitals named where she has admitting rights. Unfavourable comparisons implied [524, 527, 528,529] – implication that anyone practising for so long in this field must be burnt out; need for peer review and supervision [539, 540, 541] – suggestion that verdicts have been based on Dr Schlebaum's evidence [554]; that she has been involved in police taking statements from children [526] – her involvement with parents in Mr Bubbles and location A case [556, 557] – her wanting an alleged perpetrator charged [558] – her lack of objectivity [632], preconception/bias on her patients' telling the truth [559], giving undue credence to children's stories [584], undue readiness to consider bribery, blackmail or other sinister explanations when cases do not proceed [607, 610, 611, 629], over reaction [630, 631] – her advocacy role in the church case [560], and for her own therapy [562] – suggestion that she tells child victims what others have said; they may feel they should also make such claims [564, 565] – criticism made of her illegible notes, which make it difficult for claims made by children to be tested [566, 567] – claim that there was no medical evidence of injuries in location B case [572] {Dr Schlebaum answered that in fact there was, in information she had previously given the Commission} – Commissioner critical of her 'stating allegations as facts' [575] – use of hypnosis discredited at length {although Dr Schlebaum denied using it} [588, 589, 590]; use of hypnosis in the B case {by a police officer} [591]

Dr Schlebaum's activities to which the Commission objected:

– writing to Franca Arena [608] – writing letter critical of Commission's handling of Mr Bubbles case without reading the entire transcript [582]; being critical of Commission based only on media reports [595] – using the word 'exonerate' in letters to parents [596, 597], when the Commissioner says he has never said the Derens are not guilty [606]; quoting media reports that were later corrected, commenting at all without reading the transcripts [598, 599, 600, 601, 602, 603] – by making this 'dreadful mistake', 'excited in those parents an opinion of Justice Wood that they should not have' [606] – failing to credit Commission with improvements to Child Protection Enforcement Agency [616], when her criticism of Commission could stop that momentum [617] – criticising the adequacy of B investigation [594]; people arrested for child sexual abuse in the course of an investigation

Claims made (by victims or by Dr Schlebaum! which by implication no reasonable person could believe:

(in contrast to evidence of US police expert sceptical of ritual abusc [620, 621], and claims of satanic abuse not being made to Children's' Hospital [585], or at the start of therapy [586]) – estimates of pedophile numbers in Sydney [618, 619] – children hit on the head with a hammer without e.g. X – ray evidence of injury [573, 576, 577, 583] – having a large number of people involved in the abuse [574] – animal sacrifices [575], use of blood, urine, faeces, killings in abuse [578, 580] – elderly woman involved in an orgy [563] – police fail to surveil [621] – killings in Lithgow, since no bodies were found [624] – baby breeding and snuff movies [625, 627]

Areas not covered by the Commission's examination are too extensive to enumerate here, but particularly noteworthy are the lack of any acknowledgment of the extent and seriousness of child sexual abuse, the severe and long lasting emotional and other damage suffered by its victims, the deficiencies of the legal system in dealing with it, and any constructive suggestions for change. There was no mention of pedophiles' deliberate use of the bizarre to prevent victims being believed. Nor was there any expression of appreciation of Dr Schlebaum's years of work in a difficult and potentially dangerous field; the need for advocacy for these patients; or any concern about the threats and harassment she reported she had received. The only potentially constructive response to anything she raised was the Commissioner noting and wanting further evidence for her statement that DOCS had 'effectively blown a police operation' [633, 638]. We await the result of this request with interest. ❑

INQUIRY INTO NURSING HOMES

Call for Submissions

The NSW Parliament's Standing Committee on Social Issues is undertaking an Inquiry into Nursing Homes in New South Wales.

The Inquiry's Terms of Reference are:

1. That the Standing Committee on Social Issues inquire into and report on the state of nursing homes in New South Wales, and in particular:

(a) the extent to which the dignity, privacy, confidentiality and other rights of residents are protected;

(b) the effect of transferring the responsibility and management of nursing homes from the Commonwealth to the State Government;

(c) the likely impact of the introduction of entry fees and the increase in user – fees for nursing home residents;

(d) the adequacy of supported hostel – type accommodation to meet the needs of independent ageing persons;

(e) the use of existing capital infrastructure to expand services for the aged; and

(f) the impact on the aged community of the decision of the NSW Government to close the Office on Ageing and create the new Ageing and Disability Department.

2. That the Committee report by Monday 30 June, 1997. Submission guidelines can be obtained from the Committee Secretariat phone (02) 9230 3078 or fax (02) 9230 2981. Submissions to be sent to: The Standing Committee on Social Issues, Legislative Council, Parliament House, Sydney, 2000.

All submissions will be regarded as public documents unless otherwise requested. Submissions must be lodged by Friday 24 January 1997. ❑

From:
Royal Commission into the NSW Police Service
Ref:VMB

02 December 1996

Dr Jean Lennane
Vice President
Whistleblowers Australia Inc.
10 Wharf Road
BIRCHGROVE NSW 2041

Dear Dr Lennane

I refer to your letter of 20th November last inquiring about the status of the Royal Commission's intelligence holdings. You note that a number of members of your organisation have provided the Commission with information which has not been the subject of evidence at hearings.

All information received from members of the public forms part of this Commission's intelligence holdings. This has now become a very substantial data base. Only a relatively small amount of this material has been led in evidence at hearings.

It has been our policy not to disseminate material to other agencies without consultation with the person who provided it to us. We have been conscious of the need to maintain the utmost confidentiality with respect to our sources of information. We have had the protection of a statutory scheme which imposes strict obligations of secrecy on all our staff and makes our holdings largely immune from production in response to the process of courts or other tribunals.

This Commission is now in its concluding phase. The Police Integrity Commission ('the PIC') is poised to take on the task of investigating selected allegations of police corruption and serious misconduct. The Police Integrity Commission Act 1996 makes provision for this Commission to furnish information to the PIC. That body also has statutory obligations of secrecy much like those which govern this Commission. The PIC, too, will not employ any present or former member of the NSW Police Service. These considerations have led us to the view that, as a general rule, our intelligence holdings will be passed onto the PIC.

The PIC is in a real sense a successor to this Commission. I do not consider that members of the public who have supplied us with information would be likely to be concerned by the passing on of that material to the PIC. In the event that any of your members wish not to have their information passed on to the PIC they should make contact with the Commission and those wishes will be taken into account.

Yours sincerely,

G W CROOKE QC

JOURNALISM AND THE PUBLIC RIGHT TO KNOW
A CONFERENCE
14 AND 15 MARCH
This conference aims to bring together the profession, the industry and the academy to discuss a variety of topics relating to the media, the public, censorship and secrecy.
Introduce by Wendy Bacon. Keynote speaker John Stauber.
For details contact: Australian Centre for Independent Journalism at UTS
PO Box 123 Broadway, NSW 2007. Fax 02 9281 2976. E-mail

"The greatest thing in this world is not so much where we are, but in what direction we are moving."

Oliver Wendell Holmes

Following is the text of a leaflet collected by a member of WBA

An important message for Australians

Have you ever tried to give out leaflets in a shopping mall or stage an impromptu demonstration in a local park or square, only to be told by security guards and/or police that you are on private property and have to leave?

Well, this may be a thing of the past.

On July 22 in Bankstown Local Court (Sydney) charges against four activists were dismissed. The four had occupied Prime Minister Keating's electoral office in a demonstration to highlight the plight of East Timorese asylum seekers. When they refused to leave, they were arrested.

The magistrate found that they were exercising their rights to free speech (enshrined in international Covenants ratified by the Australian Government) and therefore had proved they had a "lawful excuse" for maintaining the sit-in despite the request to leave.

In future, if you are in a public place, exercising your right to free speech, and someone tells you to leave because you are on private property, don't give in to this. A "public place" is any place to which the public commonly go, and where members of the public are likely to be found. Shopping malls, streets, parks, squares, etc. are obviously public places.

You may not always win your point but you should assert your rights. Insist that you have a constitutional right to free speech, to exercise your democratic rights in what is a public place. Ask the security guard to write down what you have said. Do the same with the police. And don't forget that you could still be charged with obstruction, littering or other offences.

Please note that this leaflet is produced by activists. It is not legal advice.

For further information, please contact Dr Hannah Middleton on 02) 212 6855

PLEASE PASS THIS INFORMATION ON TO OTHER PEOPLE.

Victorian Branch AGM

In order to give at least two weeks' notice, the Victorian branch of WBA is proposing to hold its annual general meeting in late February or early March.

Peter McCartney, who has acted as Victorian branch chair since Kim Sawyer resigned in June, will shortly be writing to all members with the exact date, time and place. Those wishing to nominate for branch offices should send nominations (signed by proposer and seconder as well as the nominee) to branch secretary Judy Collins with copies to national secretary Matilda Bawden at least seven days before the AGM. Those members who cannot attend the AGM are entitled to appoint another member as proxy by notice given to the secretary no later than 24 hours before the AGM. ❑

High Court emasculates the Federal Industrial Relations Act.

Unfortunately the High Court has recently held that section 170DE(2) (see underlined section below) of the *Industrial Relations Act* (Cth) is invalid and unconstitutional.

There has been considerable speculation as to the meaning of the High Court's judgment and later decisions of the Industrial Relations Court of Australia are awaited to clarify the effect of the decision.

Arguably what this means is that if an employer has a legally valid reason to dismiss an employee but in the circumstances such a dismissal would be harsh and unconscionable then such a dismissal can now *no longer be o erturned.*

It should be noted that the "harsh and unconscionable" provision is still incorporated within the unfair dismissal provisions of the NSW *Industrial Relations Act 1996*. This means that in certain circumstances it may be preferable for dismissed employees in NSW to commence proceedings in the NSW Industrial Relations Court jurisdiction. Readers may obtain more information from the NSW Committee and should always seek specialised legal advice about their own particular situations.

Note : Section 170 DE Provides ;

"Harsh,unjust or unreasonable termination"

(1) An employer must not terminate an employees employment unless there is a valid reason,or valid resaons,connected with the employees; capacity or conduct or based on the operational requirements of the undertaking,establishment or service.

[The following has been declared invalid by the High Court.]

(2) A reason is not alid if, ha ing regard to the employees'capacity and conduct and those operational requirements,the termination is harsh,unjust or unreasonable. This subsection does not limit cases where a reason may be taken not to be alid" ❑

RENEWALS PLEASE

❑ WBA MEMBERSHIP RENEWALS AREDUE IN JULY. RENEWAL COSTS $20. PLEASE RENEW PROMPTLY TO ENABLE WBA TO CONTINUE ITS WORK

SUPPORT WBA

❑ BY BECOMING A MEMBER:
JOINING FEE $25, ANNUAL MEMBERSHIP FEE $20

OR

❑ SUBSCRIBE TO THE WHISTLE:
$25 (WAGED), $12 (UNWAGED) PER YEAR

❑ DONATIONS MONEY OR YOUR TIME AND EXPERTISE TO HELP US KEEP PUBLISHING THE WHISTLE WILL BE WELCOMED