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

The Whistle

NO. 42, JUNE 2005

Newsletter of Whistleblowers Australia

PO Box U129, Wollongong NSW 2500

John Millard — see page 2

Media watch

He tried to keep Aunty honest

Errol Simper
The Australian, 24 March 2005

IT'S rather sad that one John Haviland Millard perceived, on March 4 and after 23 years, a need to resign from everyone's ABC. Millard performed honourably as an internal whistle-blower, often attempting to save the ABC from itself. Inevitably, it brought Millard into conflict with certain ABC managers of days gone by, conflicts that in some cases were never really resolved to everyone's total satisfaction.

Given there's almost certainly a generation of ABC journalists and managers not familiar with Millard's story, it's worth recalling his finest hour was probably 1994, when he spoke out against the corporation's blind eye to the unofficial — and illegal — sponsorship of so-called infotainment programming.

There were other heroes of that unedifying saga, not least the former television reporter and radio presenter Tracee Hutchison, Eric Campbell (now a Foreign Correspondent reporter) and Megan James (formerly with Quantum).

What was happening was that infotainment programs were being put together by outside — non-ABC — producers, partly with corporate sponsorship money. They were then screened on the non-commercial ABC, complete with numerous and not very subtle corporate plugs. Worse, there were senior ABC executives who well knew about the practice. Revelations from Millard and others were to lead, directly or indirectly, to the resignations of then managing director David Hill, head of television Paddy Conroy, and several others.

It was a cancerous fiscal culture that also led to what's probably the lowest point in the ABC's history. It was revealed, most publicly in the Senate, that a Sunday evening series made by Horizon Films — *Export Australia* — was being funded almost wholly by companies whose profiles and products were being shamelessly and exclusively featured on the program in a favourable light. Senate questioning revealed the national broadcaster as morally bankrupt and editorially irresponsible. Even in retrospect, it makes you cringe.

A Horizon consultant, Dianne Baig, conceded to circulating material around the corporate world to the effect that companies had only to pay $20,000 to have the ABC make five-minute programs about their company and/or products as a prime-time showcase promotion. The material helpfully noted comparable time on commercial television would cost publicity-conscious companies about $42,000 a minute.

What's more, the non-commercial ABC had agreed to screen these pseudo-advertisements four times over a two-year period. It had already put 18 of a scheduled 50 segments to air before the series was somewhat belatedly withdrawn. *The Australian* ran the story on its front page (on March 25, 1995) for the edification of a disbelieving public and the scribe will forever be in debt to a source — no, not Millard — who had earlier alerted him to *Export Australia*'s doubtful provenance and intention. This shambles, incidentally, had all been overseen — or not seen — by a Labor-appointed board.

The willingness of Millard to speak — and write — in favour of preserving the ABC from corporate money might, in an ideal world, have been expected to earn him internal kudos. The opposite happened. Millard found himself regarded as A Troublesome Person and when his television program *The Investigators* was dumped, Millard was declared redundant with indecent haste. This was despite the fact he'd already transferred to another program, *Hot Chips.* After the threat of industrial action, Millard was given a job in rural radio.

It's worth stressing there was never the slightest doubt Millard had been correct in his claims about compromised ABC editorial integrity and that he'd subsequently been victimised. An independent inquiry into the backdoor sponsorship claims by a Queen's Counsel, George Palmer, left nothing to the imagination. Telstra (then Telecom), for example, had contributed $100,000 to *The Home Show.* The Business Council of Australia gave $100,000 for the *Great Ideas* series. The list of corporate donors was formidable. A second independent investigation — of the ABC's subsequent treatment of Millard — conducted by a barrister, Phillip Coleman, found Millard had suffered a "detriment to his career" as a result of his activities.

But if the ABC, led by this time by Brian Johns — Hill's replacement — believed Millard would be cowed, then it was wrong. Millard proceeded to lash out against the corporation's proposed move into subscription television, in partnership with commercial operators. Millard believed he saw another serious threat of commercial infection. Again, he and his allies won. The broadcaster's subscription arm, Australian Information Media, collapsed in September 1995.

Even Millard's friends concede he has made mistakes. He has spent the last eight years of his ABC life as a producer for the well-regarded *Australian Story* program and many believed his best course would have been to forget and forgive past events. It proved difficult. Someone who stayed close to Millard, 56, was the staff-elected ABC director during the sponsorship scandal, Quentin Dempster. Dempster says: "John was courageous and put his career on the line to expose flaws in the ABC's editorial policies. And I believe the ABC could have been more supportive of him than it was."

To be absolutely fair, Millard received a $100,000 settlement on departure. And an earlier, 1998, consolation came via a Walkley award for a story about the rebel Queensland pastoralist Camilla Cowley.

Whistleblower seeks royal commission into tragedies

Jason Gregory
Courier-Mail, 18 April 2005

THE nurse who blew the whistle on Jayant Patel has called for a Royal Commission into the scandal. Toni Hoffman, the Bundaberg Base Hospital's Intensive Care Unit's senior nurse, said she had suffered terribly in the two years since trying to reveal Dr Death's botched operations.

She said she suffered at the hands of a management that bullies and intimidates whistleblowers.

The woman who has worked for Queensland Health for 20 years said the day she went up the stairs (to Bundaberg health service district manager Peter Leck's office) after complaining to middle managers "was like walking alone to the gallows."

"It was hard to work up the courage: I was making the complaints but no one was paying attention.

"But we should have been listened to and it should have been dealt with.

"Emotions were running so high in the ICU after the complaint was first made to Peter Leck and nothing was done, and we tried every avenue to try to stop this man, we sat ruminating on who we could call next," she said.

Mr Leck has stepped aside pending a review of the hospital's safety and quality after he ignored Ms Hoffman's complaints.

"I think if there are areas of concern, there should be inquiries," Ms Hoffman said.

"A royal commission would be independent.

"Independence was something that we were concerned about (because) how independent can an inquiry be when Queensland Health are doing it themselves?

"I mean … you cannot audit yourself.

"The worst thing was when we heard a simple Internet search found he had lost his licence in the US, because it meant (the damage) was totally avoidable if they had done a proper check here."

More than 50 former Patel patients are expected to attend a Victims Support Group meeting in Bundaberg this afternoon but it is unknown how many patients had disastrous outcomes at the hands of the former director of surgery, who was paid $200,000 a year.

Patel fled Australia at Easter and returned to the US — although having had his licence revoked.

"No one wants to hear bad stuff … they want to hear good stuff," Ms Hoffman said.

"And (the executive) certainly did not want to hear anything about Dr Patel because, as Dr Patel said himself, he was making money for the hospital, putting through huge amounts of surgery, putting in long hours.

"Everyone very much believed that he was protected by management, he would say that, and it was our experience when we complained."

Ms Hoffman even informally contacted the coroner who "alluded to the fact that he had some concerns about what's going on at the hospital", and the police who spoke initially to the nurse but never followed up.

A royal commission-style public inquiry is also being urged by former patients and the state Opposition.

"I think (Queensland Health) should tell the truth and not lie," Ms Hoffman said.

"Nothing is perfect and definitely not in an organisation as big as Queensland Health. (Medical staff) don't want to be playing up one politician against another.

"It seems to me QH never tell the truth or acknowledge a problem.

"All those involved have put our lives on hold for the last two years: we are all very easy to cry, we feel terrible for the patients and guilty and upset for them.

"It is an unbelievable story: missing bodies and operations being done wrong, like hooking up the bowel wrong and the faeces coming out of the patient's mouth."

She also expressed disgust that noticeable problems like returns to theatres, high complication and infection rates and patients being sent to the ICU after Patel operations were not acted upon by management.

"I am glad that Dr Patel has left the country and there can be no more damage done and he cannot hurt anyone else."

Ms Hoffman, whose own GP was trained overseas, said many overseas doctors "are brilliant but in Bundaberg (foreign doctors) are not even given an orientation, they come in from Karachi and other places and are not shown around the town or the culture or the equipment or the terminology."

Ms Hoffman, who has been getting calls of support since being named in Saturday's edition of *The Courier-Mail,* intends to return to work.

She asked the people of Bundaberg to have faith in the hospital's staff.

CSIRO gags retired scientists

Rosslyn Beeby
Canberra Times, 14 May 2005

A group of retired CSIRO scientists has been gagged by management and formally cautioned against making public comment about the national research organisation.

The warning was delivered yesterday morning by CSIRO Sustainable Ecosystems chief Dr Andrew Johnson to about 13 honorary research fellows at the division's Canberra headquarters.

A group spokesman said the honorary fellows — who undertake unpaid research work and mentoring for CSIRO in return for library and computer access — had been "rapped over the knuckles and told to shut up".

But CSIRO chief executive Dr Geoff Garrett said he did not believe any attempt had been made to gag the retired scientists. "We have a policy on public comment, and that applies to honorary research fellows as well as all CSIRO staff."

Dr Garrett said he had been told the majority of the CSIRO Sustainable Ecosystems research fellows had accepted Dr Johnson's view on public comment.

Dr Johnson confirmed the meeting had been called to remind the research fellows of their formal obligations and to establish rules about their conduct.

"They are guests of this division.

"They are not employees of the organisation. They have been told they are not entitled to make independent comment."

The disciplinary action came after recent public criticisms by retired CSIRO Sustainable Ecosystems

ecologist and honorary research fellow Dr Hugh Tyndale-Biscoe at a book launch in Canberra. At the launch of a revised edition of his book Life of Marsupials, Dr Tyndale-Biscoe said he had decided to speak out on changes to the research direction of CSIRO Sustainable Ecosystem after several wildlife ecologists were told they were "surplus to requirements".

Dr Johnson said yesterday that Dr Tyndale-Biscoe was "entitled to his view, but it is a mistaken view".

He dismissed suggestions that Dr Tyndale-Biscoe had been reprimanded, but said it had been made "loud and clear" to the research fellows what their rights and obligations were "if they wish to stay on as part of CSIRO".

A member of the group said the honorary fellows had been given three choices — they could agree with the division's restructure, disagree but "be prepared to wear it", or resign if they felt they couldn't "live with the changes".

CSIRO Sustainable Ecosystem's honorary research fellows include Emeritus Professor Charles Krebs, international biodiversity expert Dr Denis Saunders and former curator-in-charge of the Australian National Wildlife Collection, Dr Richard Schodde.

Opposition public administration spokesman Senator Kim Carr has described the warning to the CSIRO research fellows as "extraordinarily authoritarian".

Hundreds of safety whistleblowers sacked

http://unionsafe.labor.net.au/news/
25 February 2005

Hundreds of UK workers are being sacked every year for refusing to work in unsafe workplaces according to a UK Trades Union Council (TUC) investigation, and they are looking to the Australian model as a solution.

The survey was conducted jointly with UK safety journal *Hazards.*

Hazards says that in the five years since 1999, 1,500 workers have found themselves out of a job for raising safety concerns with their employers.

The TUC says that under the UK's 1996 Employment Rights Act workers have a right to refuse to do dangerous work, but because an employer found guilty of unfairly dismissing someone on safety grounds may be looking at a penalty of as little as £3,800, many unsafe bosses find it cheaper to sack than make improvements.

The study shows that while workplaces with unions are likely to be safer places than those with no union presence, a union safety rep trying to improve the safety of working practices can find their attempts thwarted by employers with scant regard for the health and safety of their employees.

Safety reps can raise safety concerns with their bosses, but employers can simply choose to ignore their approach, for there is no legal duty on them to respond says the TUC.

"It shouldn't be a firing offence to object to unsafe work," says TUC General Secretary Brendan Barber. "Workers should not be placed in the situation where they are forced to choose between risking their job or risking their personal health and safety.

"We need a legal system that protects safety whistleblowers, not rewards them with their cards.

"The problem is far worse than official statistics show. Unionised workers get advice and representation so are far more likely to get their job back where employers do the wrong thing. Workers who aren't in a union, and casual and migrant workers stand little chance of redress."

"Giving union safety reps more rights in more workplaces is the ultimate win-win," says *Hazards* Editor Rory O' Neill. "It provides skilled, trained on-the-ground union safety advisers at absolutely no cost to the Government, complementing the work of the Health and Safety Executive and saving lives in the process."

The TUC and Hazards are calling for several improvements to be made in an attempt to reduce the number of workplace accidents which saw 235 deaths and nearly 31,000 serious injuries happen in the UK last year.

The Government should introduce a system of roving safety reps in the UK to allow unions to bring safer working to workplaces where there is no union presence. The experience of other countries like Italy, Norway and Australia suggests that roving reps can have a significant impact on improving workplace safety records.

The Government should allocate more resources to allow the Health and Safety Executive and local authorities to increase the number of workplaces they can inspect each year.

In Australia, unions are able to use Provisional Improvement and Provisional Prohibition Notices against employers who take risks with the health and safety of their workforce. The Notices are proving very effective at curbing dangerous working practices, and the Government should introduce a similar system here.

There should be a right for workers and union safety reps to refuse to work in dangerous workplaces without the fear of victimisation or dismissal, and where an employer has been found guilty of unfair dismissal, the employment tribunal should have the right to give the worker their job back.

High Court supports Title IX protection: law now covers whistle-blowers

Charles Lane
Washington Post,
30 March 2005, page A01

The Supreme Court toughened a federal law against sex discrimination in federally funded educational programs yesterday, ruling that it prohibits not only unequal treatment of girls and women at school, but also official retaliation against anyone — male or female — who blows the whistle on unequal treatment.

By a vote of 5 to 4, the court ruled that the federal law, known since its adoption in 1972 as Title IX, authorizes a federal lawsuit by Roderick Jackson, a girls' basketball coach in Birmingham who says he was fired in 2001 for complaining that boys' teams were receiving better equipment and practice facilities.

Writing for the majority, Justice Sandra Day O'Connor noted that Jackson's claims remain to be proven at trial, but that Title IX would be weakened unless plaintiffs such as Jackson were entitled to a day in court.

"Reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished," O'Connor wrote. "Indeed, if retaliation were not prohibited, Title IX's enforcement scheme would unravel."

O'Connor added that minors often depend on teachers and coaches "to vindicate the rights of their students because they are better able to identify discrimination and bring it to the attention of administrators." O'Connor was joined by Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

The decision in Jackson v. Birmingham Board of Education, No. 02-1672, means that those who allege violations of Title IX will enjoy roughly the same right to sue for retaliation that federal law confers on those who raise charges of racial discrimination in employment.

The court's decision strengthens enforcement of Title IX at a time when the politics of the law are becoming more heated.

Many supporters of the legislation have credited it with raising the quality and quantity of women's athletic programs.

The Bush administration says it fully supports Title IX, and it supported Jackson in the case decided yesterday. Some of the arguments in O'Connor's opinion echoed arguments in the administration's friend-of-the-court brief.

At the same time, Title IX has come under fire from critics — including such prominent Republicans as House Speaker J. Dennis Hastert, a former high school wrestling coach.

The critics take issue with federal rules that seek equal rates of participation in sports between men and women. Fewer women are interested in sports, they argue, so the only way schools can achieve the requisite "proportionality" is by dropping predominantly male sports, such as wrestling.

In 2002, the Bush administration responded with a commission to study the impact of Title IX. Last week, the administration enacted a version of one commission recommendation, announcing that it would allow colleges and universities to use e-mail surveys to gauge the athletic interests of students to show that they are offering enough opportunities to meet the demand for women's sports.

Advocacy groups favoring strict Title IX enforcement said this would relax pressure on schools to ensure that males and females participate in sports at the same rate.

Supporters of Title IX hailed yesterday's opinion as a major statement by the court on equity between the sexes.

"This decision is a slam-dunk victory for everyone who cares about equal opportunity," said Marcia D. Greenberger, co-president of the National Women's Law Center, who represented Jackson. "The court has confirmed that people cannot be punished for standing up for their rights. This protection is not just critical for Title IX, but also for other bedrock civil rights laws."

But opponents of Jackson's lawsuit warned that the court's ruling will open the door to more lawsuits, forcing school systems to divert resources to their legal departments that they should be using to bolster classroom instruction.

"Litigation is costly, and it does take up people's time and create animosity," said Julie Underwood, general counsel of the National School Boards Association, which represents all state school boards in the United States as well as about 15,000 local school boards.

Underwood said that the court's ruling would permit lawsuits for retaliation whether or not the whistleblower's charges of sex discrimination were true.

Those concerns were voiced in a dissenting opinion by Justice Clarence Thomas, who was joined by Chief Justice William H. Rehnquist and Justices Antonin Scalia and Anthony M. Kennedy.

"Under the majority's reasoning," Thomas wrote, "courts may expand liability as they, rather than Congress, see fit. This is no idle worry. The next step is to say that someone closely associated with the complainer, who claims he suffered retaliation for his complaints, likewise has a retaliation claim under Title IX."

Jackson will now have the opportunity to present his case in a federal district court in Alabama, unless he reaches a settlement with the school board.

In 2003, he was given a new position as an interim basketball coach for the girls' team at Ensley High School in Birmingham.

"You can't separate the students from their teacher or coach," he told reporters yesterday. "Whatever conditions they had to undergo, I have to undergo, too."

[Kim Sawyer of Whistleblowers Australia comments: This highly significant decision effectively gives whistleblowers the same protection in the US — what is termed Title IX protection — as those protected against racial discrimination. This gives a lead as to the type of protection required in Australia, namely protection such as that offered under the Racial Vilification Act.]

WBA AGM

This year's conference and annual general meeting will be held in Adelaide, 9-11 September. See the enclosed flier for information.

Send notice of items for the AGM agenda to the National Secretary, Cynthia Kardell, at 7A Campbell Street, Balmain NSW 2041, email ckardell@iprimus.com.au

WBA – a way forward

Cynthia Kardell, Peter Bowden and I have had a couple of meetings this month in Sydney to discuss ways in which we could (1) establish an issue-based, more proactive stance in NSW this year, and (2) explore ways of shaping and conducting more national WBA initiatives and campaigns.

Cynthia suggested that one way to achieve focus and an "outward" WBA stance would be to find common links between local or personal WBA issues and the "core" issues established as an agenda.

We have in mind the idea of national issues which are "pushable" locally in each state, and vice-versa. For instance, workplace bullying and victimisation, along with the new focus on workplace psychopaths, and indeed mental health and the "Soviet-style psychiatry" used as a tool against whistleblowers, particularly in the public sector, could realistically be brought under the general umbrella of local and a national core issue. (Queensland currently has the only legislation on bullying).

In looking at this, we came up with the idea of a kind of Local Action, National Goals agenda which we felt could bring keener focus to the WBA nationally, where, at the moment, all sorts of issues are being discussed in all states with no wider or national WBA coordination and, more importantly, action where the issue warrants it.

It was also strongly suggested that in any WBA initiative or agenda for action, there should be no undue preoccupation with WBA meetings, structure or issues relating to the framework of the organisation itself — in other words, we're not here to argue who does or should do or is not doing what, but how we should maintain proactivity — looking outwards, focusing on action at all times.

The three key agenda issues that we decided on are as follows.

1. Workplace bullying — a growing nightmare, now on the increase and likely to grow even more as the government carries out its workplace "reforms," expected after July this year, all but crushing what's left of union protection, removing small businesses (how small?) from the unfair dismissal relations, and pushing for a scaled-down national arbitration and regulations on salaries and workplace conditions. It's clear that in the "new" workplace, the restraints will be loosened and maybe done away with altogether on bullying, intimidation, misuse of psychiatry against whistleblowers and, indeed, the workplace psychopaths themselves. The whole syndrome bodes ill for employees and for anyone who blows the whistle from now on. Ruddock's latest neo-con move to allow corporations to sue individuals or groups for "defamation" only adds to the challenge.

2. Whistleblower legislation — there are two areas in which we feel the WBA should be researching, formulating and lobbying proactively now — (1) The weaknesses in each of the various state Protective Disclosure Acts (in NSW, for instance, legal defences for whistleblowers come into force only in event of litigation); (2) A standard, national whistleblower protection act which covers all Australians equally, legislates complete protection, genuine and thorough investigation, firm punitive action against bureaucratic or corporate wrong-doers, and compensatory action in the case of proven whistleblower intimidation. It's clear that a Commonwealth act could only apply to civil servants (where there's no protective disclosure at the moment), but we feel it could cover public and private corporations as well through the jurisdiction of the Corporations Act. It's our view that national legislation, while not covering all Australians, would be regarded as a "standard setter," seen as sitting above the present system of various, differing and therefore discriminatory state laws.

3. Honesty in government — an umbrella values-based campaign for transparency and accountability in all sections of our society, focused on "spin" and misinformation, withholding of information, dodging of responsibility and outright lying by our politicians, bureaucrats, business leaders and sporting and community bodies in Australia.

We feel this is a good start on a pressing task, and we'd like to hear your comments, suggestions and general input on (1) the "core" issues, (2) whether we can achieve, or indeed are interested in achieving, a more focused proactive national stance, (3) how we're going to do it, and (4) how can we coordinate a more effective, more national current affairs and information program — taking into account the four means by which we've been getting the message out about WBA and our issues so far: the media (interviews, articles, press conferences), our website (under major redevelopment), special addresses to public groups (very effective, and we need to do much more), special WBA functions, including fund-raising events.

Any takers?
All very best regards
Derek Maitland
29 March 2005
[See comment on back page.]

Psychiatric assessments forced on whistleblowers and public sector employees by public sector management

Mary Lander
(member of Whistleblowers Australia)

I am pleased to advise my submission to the Senate Legal and Constitutional References Committee on this subject was accepted and will be now considered by the Committee in the context of an Inquiry into the Privacy Act 1988, which is expected to report by 30 June 2005.

While it is one of a range of privacy issues to be considered and discussed during the course of the Inquiry, the subject of forced psychiatric assessments will also be considered in the context of "violations of privacy

and an individual's right to their personal information."

I was subjected to this myself in December 2002 after writing to the Prime Minister making disclosures relating to the financial losses of Medibank Private and raising another issue about the unfair treatment of an employee in the Commonwealth Government Department where I work. I demanded nothing other than an investigation into the issues I raised. However, after my letters were forwarded to the Department for response, via the accountable Minister's office, I was forced to undergo a psychiatric assessment. I can only have empathy for others who have been subjected to this most appalling, insulting and degrading form of bullying and abuse.

In my case the managers who subjected me to this were implicated by the disclosures I made and control both the whistleblowing and grievance process in the Department. Despite my exhaustive and fruitless attempts to have this matter dealt with by Authorities and three threats against my employment to date, I am still persevering despite it all.

Despite the fact I was cleared of the false charge of psychiatric problems by the psychiatrist I was forced to see under duress, having been suspended from duty until such time as I agreed and asked nothing other than "Did you write this letter to the Prime Minister" before they subjected me to this, I do not take it lightly at all.

If there are others who have been subjected to forced psychiatric assessments, under similar circumstances, either as State or Commonwealth Government public sector employees, I would be interested in hearing from them. Perhaps collectively we can help to make a difference and bring an end to this insidious form of bullying and abuse.

You can help. If you are interested in sending me a one-page overview of your case and an outline of the circumstances under which you were forced to undergo a psychiatric assessment, you may be able to help make a contribution to this campaign to bring an end to this appalling practice.

The information will naturally be treated in confidence, however, opportunities may arise where the information can be used to support this campaign and it would be useful in terms of providing examples. You have my assurance that such information would not be forwarded to other parties (being appropriate authorities) without your consent and without assurances from those authorities that you will not be victimised as a result of having provided the information.

Should you wish to respond, please forward your one-page overview to me at mary.wba@ozemail.com.au

Please put "I was forced to undergo a psychiatric assessment" in the subject heading.

WBA submission on NT whistleblower bill

Peter Bowden

Whistleblowers Australia (WBA) recently prepared a submission to the Northern Territory Department of Justice on its proposed Public Interest Disclosure Bill.

Members of WBA who helped with the submission included Peter Bennett, Cynthia Kardell and Kim Sawyer.

The Northern Territory's proposed bill is among the more comprehensive of the state and territory acts. Whistleblower protection laws that have been passed in state after state have seen an increasing series of protections being put in place. WBA, however, believes that legislation in any state, including that proposed for the Northern Territory, needs to go much further.

WBA sees three key objectives behind any whistleblower act.

1. The first and the overriding issue is that whistleblowers need to know that they will be protected, not victimised; and that their disclosures will be treated as being 'in the public interest'. The legislation designed to prevent the unexpected negative treatment that they receive from their colleagues and employers needs to be strengthened even further

2. They have to know that the career risks that they are taking and the ostracism they are experiencing will result in the wrongdoing being investigated and the wrongdoer being punished. Many whistleblowers are dismayed that after surviving their whistleblowing ordeal, denials and cover-ups have enabled the wrongdoer to escape punishment.

3. Third, whistleblowers need to be helped. Whistleblowers are ordinary people, unskilled in the law, and uncertain about how to prevent illegal or immoral actions. They need help in working their way through their act, in knowing how and to whom they should complain, and in using the act to protect themselves.

Role of the Ombudsman

WBA advocates a number of legislated changes in emphasis and responsibilities for the whistleblower agency for achieving these objectives:

1. The main method is establishing a strong, pro-active whistleblower agency, either separately or as a dedicated branch of the ombudsman's office, designed to actively support and protect genuine whistleblowers. The current legislation, even the most progressive, assigns the ombudsman a passive rather than an active role. The whistleblower, if his or her complaint is not investigated, has to take it to the ombudsman, not vice-versa. If he or she is victimised, the whistleblower has to respond, including seeking injunctions, or other forms of relief. The ombudsman will not stop it. This passive role for the ombudsman has the negative result that although most acts, including that of the Northern Territory, make reprisals a criminal offence, virtually no office in Australia has used this legislation. The onus is again placed on the whistleblower.

2. A more positive stand from the Ombudsman's office is advocated, in consultation, support and training to people involved in whistleblowing, including assistance to the whistleblower. This training and advice should be widely available -— to managers and administrators throughout the public sector, to consultants and trainers in industry and government, to trade union officials and even to academics who teach in this or related fields.

3. The ombudsman's office should be aware of the whistleblower's complaint from the outset, and on the circumstances surrounding the disclosure. WBA considered whether the complaint should be made directly to the ombudsman, instead of the whistleblower's employing agency, but decided that such an approach would create an excessive workload for the ombudsman, and would also relieve the employing agency of the responsibility for its own internal ethical behaviour. The ombudsman, however, would be informed and would follow up to ensure that the agency resolved the issue and did not cover up the wrong-doing

Whistleblowers Australia also urged that the Northern Territory introduce a Whistleblower Protection Act for the private sector, for the current proposal only covers the public sector. It also advocated a False Claims Act, a US act which is indisputably the most effective of all whistleblower acts.

The Northern Territory is the last of the states and territories to provide legislation to support whistleblowers. Australia, however, still has no national act. It is the only English speaking country to be without such legislation.

FOI: foiled in Queensland

Don Eldridge
Associate editor of *The Whistle*

The resignation of David Bevan, Queensland's Information Commissioner, has resulted in a retreat from the idea of open, democratic government. The recent political dominance of Labor, under premier Peter Beattie, has resulted in a government trying to stifle all opposition, all criticism, and in many cases succeeding.

An important part of this campaign is to stop people from finding out what is going on. A notorious example is how any document "tabled" in Cabinet cannot be accessed under Freedom of Information (FOI) legislation. This allows bungling, cost blow-outs, and the like to be kept secret. But since not everything done by government can be presented to Cabinet, people still can use the FOI "loophole" to discover embarrassing information.

One way to plug this "loophole" is to frustrate people trying to gain information. William De Maria, at the University of Queensland, says the latest statistics show that in the 2002-03 period, 146,069 requests for information under FOI were blocked. Can this be equated with democratic governance?

With Bevan's resignation, Beattie saw another way to plug the "loophole". It was quite simple. In February 2005 the position of FOI Commissioner was advertised. The applicants were interviewed and a short list of four names submitted to a selection panel. One of the applicants was Greg Sorensen, Deputy Information Commissioner, described as being fearless, honest, and the finest FOI officer in the country.

Of the four short-listed, Sorensen came last. The panel instead chose Cathi Taylor, a woman with little experience in FOI matters and no legal training. Her qualifications consist of working for various Labor departments and politicians over the years, as well as being married to Education Queensland's director-general. (Later advertisements for FOI officers in other departments, paid less than half what Taylor earns, insist applicants must have law degrees, etc., which would preclude Taylor.)

To observers, such as journalists at the *Courier-Mail,* this unusual outcome suggested Beattie was putting a loyalist in a position where potentially damaging FOI requests could be stymied. In order to protect government, it would not be necessary in every case to frustrate FOI applicants. For example, warning government beforehand that someone would be trying to get information on a certain subject could provide time to devise a plausible explanation, or shred the evidence, as already has occurred.

Smelling something wrong with the selection of Taylor, journalists began sniffing around. What they found was disquieting. One member of the selection panel, and the most senior public servant involved, Leo Keliher, director-general in the Premier's Department, also had been Taylor's leading referee. At some stage he ceased being Taylor's referee but apparently continued to play a role in the selection process. This alone calls into question the legitimacy of what went on. On top of this, the panel's chairwoman and Taylor were personal friends.

John Uhr, lecturer in politics and government at ANU, felt the involvement of the Premier's director-general was not an honest way of doing things, as choosing an FOI Commissioner is supposed to independent of government.

The journalists wondered how someone with minimal experience could be chosen for such a high-level and important position. It reeked of cronyism. It turned out the normal selection criteria for the position were watered down. Instead of needing real abilities, applicants merely had to have a capacity to acquire these abilities. Anyone reading this article could have applied for and got the job, provided they had the right connections.

On her first day in office, Taylor fired Greg Sorensen. In 2004, David Bevan and Sorensen had released details of a government handout to the Berri company, details Beattie wanted kept secret. So here was Beattie's revenge. And here is where democracy went down the drain.

Taylor and Beattie tried to deny Sorensen had been Deputy Commissioner, nor was he being fired. He was, they claimed, only a temporary FOI officer and would return to being deputy ombudsman. These denials were shown to be absurd after the *Courier-Mail* published government documents showing Sorensen as Deputy Commissioner.

Early in her new job, Taylor was seen attending a $300 one-day beginner's course set up to introduce juniors to the basics of FOI. The *Courier-Mail* gleefully reported this as Taylor trying to learn what she had been hired to do. Taylor responded by saying she was "vetting" the course, to see if it was suitable for officers under her control. Since her background in FOI is minimal, it is hard to see how she is competent to assess the course; under the circumstances, the *Courier-Mail* version seems more plausible. As well, the *Courier-Mail* reported that FOI staff were appalled they had been put under such an inexperienced leader. (Taylor quickly advertised for an assistant, with a law degree of

course, to take over Sorensen's role and advise her about legal niceties.)

Since Taylor had worked with so many Labor departments and individuals, she could not get involved in any FOI matters dealing with them. Anything to do with Education Queensland also was out of bounds, due to her marriage. As opposition politicians pointed out, taxpayers were paying a full-time salary for a part-time Commissioner. Taylor replied she would not take a personal role in any matter involving personal Labor friends or Labor departments in which she had worked.

This was not a "core" promise. Shortly after taking office, Taylor said she wanted a "hands-on" role in attending to a request for information from one of her previous workplaces, the Department of Premier and Cabinet.

The above situation caused Fred Albietz, the FOI pioneer in Queensland, to say that with limited FOI experience, and no law degree, Taylor's appointment was a grave mistake, as the position demands not only much experience, but also an appreciation of the finer points of law.

Australia's leading expert in FOI matters, Rick Snell, senior lecturer in law at the University of Tasmania, and editor of the *FOI Review*, has said Queensland's high reputation in FOI matters has now been tarnished. From far-off Ireland the same criticism is heard. At University College Cork, a lecturer in FOI, Professor Maeve McDonagh, related how Queensland's FOI legislation was once considered a world leader, and often cited in Irish cases. McDonagh expressed surprise that Greg Sorensen had not been allowed to continue his work.

More comments come from Professor Ken Wiltshire, at the University of Queensland. He said Labor is putting its supporters into positions of power in many areas once felt to be free of political influence. He named Labor interference in the Office of Governor, the Queensland Parliamentary Service, the ombudsman, the auditor-general, and the judicial system.

Wiltshire says the Chief Justice, Paul De Jersey, has been for some time warning the public of the danger in political interference in appointments to the judiciary. The record shows there has been a bias in selecting magistrates, leading to mishandled court cases and low staff morale as experienced officers see people with less experience, but with contacts to the Labor Party, promoted above them.

As far as whistleblowers are concerned, these are not happy times. When staffers at the Queensland Transport Department alleged widespread corruption (you can get an official, valid driving licence without knowing a word of English), there was an internal inquiry. The people alleged to be corrupt not surprisingly found themselves not guilty of any wrongdoing. Peter Beattie found nothing wrong about this.

At the John Tonge Centre, which does forensic work for the police, mismanagement has been pervasive. It has been taking far too long to get things done. Some people charged with criminal offences have been released rather than prosecuted, due to delays in getting evidence to court. Yet when staff at John Tonge tried to alert the public to these problems, they were threatened with prosecution. Labor leader Beattie did not come out in support of the workers.

When Beattie himself was accused of corruption, in offering a large sum of money to the Palm Island Council if members would attend a function, he had little to worry about, even though a Sydney solicitor felt there was a strong case against him. The Attorney General quickly decided his mate was innocent. The Crime and Misconduct Commission (CMC) also decided Beattie had done nothing wrong. However, this merely shows how people now are afraid for their careers. The expert hired by the CMC to look into the matter said Beattie probably hadn't offered a bribe, but recommended an official investigation be made of the matter. This has been ignored.

Several government departments openly have warned their staff they will be prosecuted if they divulge details of alleged corruption. Any worker who feels something is wrong should bring it to the attention of their supervisor, not the *Courier-Mail*. (This doesn't sound like a smart thing to do, career-wise.)

At the time of writing this article, a large, ugly scandal is brewing in Bundaberg, where an overseas doctor is claimed to be responsible for many hospital deaths. Efforts in the past failed to get something done, as Labor politicians ridiculed the whistleblowers. Thanks to one courageous nurse, Toni Hoffman, who refused to be silenced, "Dr Death" had to flee the country. Beattie and his cronies, who might have saved lives had they listened, show little in the way of remorse. The Health Minister refuses to resign. Bye-bye to the Westminster System of accepting responsibility along with the chauffeured limousines, lavish lunches, and long overseas jaunts.

Institutions set up to protect the public are being politicised by a government riddled with mismanagement and, at times, corruption. The opposition parties are divided and lack credibility; every word they utter seems to be negative. It is fortunate we still have newspapers with people willing to dig up the dirt and publish it.

I could have filled this article with references, but instead chose a narrative form. Aside from personal opinions, the information I used comes from newspapers. I am in debt to Malcolm Cole, Ryan Hefferman, Des Houghton, and Hedley Thomas, all of the *Courier-Mail*, and Sean Parnell, of *The Australian*. Let us hope politicians never get the power to suppress investigative journalists.

Blowing the whistle on fascist trends

Derek Maitland
Media Officer,
Whistleblowers Australia

In 1968, when I crawled out of the Vietnam War to join the big anti-war demonstrations in London, "fascist" and "fascism" were terms that I instinctively ignored and left to the anarchists and extreme leftists who slugged it out at the barriers with the police.

Because of its apocalyptic association with Nazi Germany and the horrors of Hitler's reign, fascism was a word that thinking people thought carefully about before using in the context of that time. Even the institutional savagery and complete disregard

for human rights of the US "defence of freedom" in Vietnam, even though the "military-industrial complex," supported by much of the US political structure, was another term that was endemic of that time, it was difficult for a lot of people to associate it all with fascism as we, in those post-World War II years, had learned to perceive it.

Even in the years after that, Richard Nixon was simply a political crook who was unmasked and dealt with by ultimately solid and unassailable democratic ideals. Maggie Thatcher's ultra-rightist despotism, her declaration that "there's no such thing as society," and, among other things, her open and fervent support for one of the world's most vicious post-war military despots, General Augusto Pinochet, seemed to be generally regarded as nothing more sinister than British free speech and democracy at work.

Even George W. Bush's overt presidential power grab in 2000, underscored as it was by one of American history's most blatant electoral fiddles, left many observers with the feeling that, well, the Americans have done it again. Another scandal on the way to the White House.

Looking back now on those times, and key events that have happened since, I can quite clearly see the steady progression toward, let's say, the *threshold* of that much-denied state — fascism — that those developments signified. And yet, even today, I still have to work my mind and tongue around that word to write it or utter it — perhaps more fearful now that, having accepted that we are indeed living under fascist, or neo-fascist, governance, it may already be too late for us to roll it back.

I also fear that what it means for us, as Whistleblowers Australia Inc, and whistleblowers generally, is that we're going to be thrust right into the front line of moves to halt the systematic erosion of democratic and societal principles; and, of course, we'll pay dearly for it. Perhaps more than ever before.

I guess my own real awakening to the new political reality began when I was filming in London in 2001, at the time when anti-globalisation protesters were in pitched battle with security forces protecting the Group of Eight conference in Genoa. Rupert Murdoch's Sky TV News, which is on the same political wavelength as his infamous Fox News in the US, invited the eminent left-wing politician Anthony Benn to comment on the Genoa violence.

Benn made what I immediately saw as a considered, sensible and illuminating view of what was happening. Taking the radical fringe violence aside, he said, this was an expression of much wider genuine fear and anger at the fact that we are now being governed not by our own political representatives but "unelected, faceless corporate power" pursuing its own political and economic agenda.

The Sky News interviewer, a girl in her twenties, rudely cut him off. "Thank you Mr Benn," she interjected. "We all know where you're coming from." And that was that.

That "unelected, faceless corporate power" holds the political reins today, here in Australia and in most other developed capitalist societies. It's known as neo-liberalism, or neo-liberal economics, in which the corporate world, aided, abetted and, indeed, served by the political structure, is imposing virtually unrestrained free market fundamentalism on us — turning us, in fact, from citizens of a society into cynically manipulated producer-consumers of a quite different "society" entirely: an economy.

Neo-liberalism decrees that free, unrestrained market forces will solve, in a basic supply-and-demand fashion, most if not all of society's problems. Moreover, its key principle virtually reinstates the extreme "master-servant" inequity of the early Industrial Revolution — that the captains of capitalism, the owners and investors, should be entitled to optimum, maximum profitability and every last cent of return on their investment, and decide themselves, without arbitration, how much their workers should receive.

Apply this simplistic principle to what's happening in Australia today, and it explains why, for example, our major corporations are consistently making huge, record profits, while consistently "downsizing" their workforces. Why the government is consistently slashing budgets for social services and welfare — to the point of serious social and infrastructural abuse, suffering and dislocation — and at the same time positioning itself to drive the last nails into the coffin of unionism and collective bargaining.

It explains why Attorney-General Philip Ruddock is preparing legislation to be introduced after the government assumes Senate control in July which will allow corporations to sue ordinary citizens for "defamation," with the obvious implications and ramifications. Why dozens of environmental groups have already had their traditional government funding slashed so that they can't "use taxpayers' money" to criticise and protest against corporate wrongdoing.

We've seen how the Tasmanian logging giant Gunns, with the support of John Howard and the decidedly rightist state Labor government, is already jumping the gun on Ruddock and suing Greens leader Bob Brown and others to shut down fierce environmental opposition to its activities.

Is this powerful, mutually supportive ideological alliance of government and big business, together exercising "stringent social and economic control" and eroding individual rights, fascism? There are many who are insisting so these days, that neo-liberal economics is in fact "fascist" economics, bent on what Dr David McKnight, senior lecturer at the University of Technology, Sydney, refers to as an "unrelentless expansion of an industrial system aimed at generating products to satisfy a consumerism which, past a certain point, substitutes for other meaning and value in people's lives."

In his book *Rethinking Right and Left*, published this year, Dr McKnight describes neo-liberalism as the "24/7 economy," with "policies that reign at the cost of social responsibility," and a culture that's "lean and mean, based on a shrunken moral universe where competitiveness and self-interest rule … a society dominated by commercial values and, increasingly, only commercial values."

Coincidental to this has been the rise among political commentators — not here in Australia, but certainly in Europe and the USA — of the term

"post-democratic era." Taken in its simplest definition, this is where we are now, and we've got here by allowing our governments such secrecy and lack of accountability that they're able, in concert with their powerful corporate masters, to deny us, the people, a role in the decision-making process that we're entitled to as citizens of a democracy.

This, of course means that our only access to vital information and policy that we, by rights, should be privy to is via whistleblowers; and it explains to a great extent the welter of high-level political and military whistleblowing that's been going on lately, not to mention the way the term itself has now become common in our newspaper headlines.

We can see further evidence of the post-democratic era in the way the Howard government has effectively politicised the public service and defence services, the people *we* pay to run and defend *our* country. What it means, apart from the political lying, misinformation, lack of accountability and lack of responsibility that this veil of secrecy has produced, is that our role as a national whistleblower support and activist group will become even more vital to the defence of democracy in the future.

How have we allowed ourselves to reach this awful state of affairs? Well, John Howard showed us how when he focused his campaign on fears about interest rate rises in the 2004 election. Remember the so-called "Moral Majority?" Well, now we've got the Compliant Majority — an electorate so deep in personal and household debt — in excess of $700-billion at last count — that it now has no voting flexibility: it must, for its own sake, support any policy that guarantees that interest rates will not rise more than two points, let alone go through the roof.

And what has encouraged and, indeed, manipulated and guided this alarming debt-ridden materialism? Neo-liberal economics, of course; our politicians in consort with the corporate sector.

This compliance is also, I think, turning a moral blind eye to the other disturbing policies and trappings that point to fascism, by any other name, these days. Think of fascism as we've learned to picture it. Then think of detention centres, children behind barbed wire; possibly dozens of cases of mentally ill people being locked in these centres and maximum security prisons; a mentally disturbed Australian citizen illegally and quite secretly deported — and claims there may have been more.

Think of the 22 or more pieces of anti-terrorism legislation that Philip Ruddock has pushed through parliament when, as the ex-senior intelligence officer and whistleblower Andrew Wilkie has claimed, the existing legislation was quite capable of protecting Australians from attack.

Think of the compliance, on a massive scale, that's allowed subjects like torture and "rendition" — outsourcing this vile crime to other countries that freely practise it — to become part of our daily news and information fare, with no evidence of mass, widespread, vociferous opposition.

Think of detention without trial. Think of prisoners being shipped about the world to hide them from human rights scrutiny.

Think what's going to happen to the "Bali Nine," if they're not just found guilty of drug trafficking but sentenced to death. Our federal police will have effectively "rendered" them to capital punishment under Indonesian law when they could have quite safely and efficiently nabbed them at the airport on Australian soil.

Dr David McKnight certainly implies that neo-liberalism is a step down the road to fascism. He describes it as the "ugliest side" of conservatism — neo-conservatism, as it's called — which can be "a virulent nationalism and hatred of foreigners. Its war-like roots predispose it to militarism and the rule of the physically strong.

"We are reaching the point where the process … is conflicting with the deepest human needs. It is reducing ethical values to matters of economic calculation. It is commodifying all human relationships and, perhaps most dangerous of all, it is bumping up against the physical limits of the planet."

We're not the only nation with a Compliant Majority, of course. According to Richard Heinberg, a journalist and educator at the New College of California, the same electoral compliance put George W. Bush in the White House in the "stolen" election of 2000.

"If one were to pinpoint the moment of death of American democracy," he writes, "it would likely be at that failure, in December 2000, of the American citizenry to respond. As long as there are elections, someone will try to rig them. But when people stop caring if elections are rigged or stolen, then elections themselves cease to have any meaning.

"This extraordinary assertion is not merely an expression of partisan bitterness over the rightward drift of American politics. What is happening now is of far more historical and structural significance than a temporary shift in the relative power of the [two] parties. Disturbing signs point to the ongoing emergence of a fascist-style dictatorship in the US."

So, what can we do? We in Whistleblowers Australia Inc can certainly strengthen and focus the essential role we play in the support and preservation of a truly free society. We as Australians can ally ourselves with what Dr McKnight calls a "new moral vision, a values-based political movement … that can validly draw from the [best] ideals of liberal, conservative and socialist theories and from religious philosophies.

"These ideals involve a society meeting human needs which include but go beyond the material wherewithal of life. They include justice, fairness, equality [and] the valuing of human lives, in both the public rational world and in the private world of emotion."

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New South Wales
"Caring & Sharing" meetings We listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night at 7.30pm, Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.
General meetings are held in the Church Hall on the first Sunday in the month commencing at 1.30pm. (Please confirm before attending.) The July general meeting is the AGM.
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WBA: the future

The emails between members of Whistleblowers Australia's national committee have been running fast and furious. A feud? Not at all. The vigorous discussion has been about future directions for WBA. Peter Bowden, Cynthia Kardell and Derek Maitland set the ball rolling by writing a document proposing that WBA focus on three areas: workplace bullying; whistleblower laws; and honesty in government (See page 6). This triggered a range of responses.

One of the issues covered is the nature of WBA. Should we remain a voluntary organisation whose baseline activity is providing information and support to individual whistleblowers, or should we be seeking external funding and becoming a more focussed, professional organisation? There are arguments on both sides.

Another issue is websites (see the two addresses in the column to the left). Should we be offering a news service of whistleblowing stories? Or is this a waste of effort and not very relevant to most of the people who approach us?

Not everyone agrees on a single direction. To some extent, initiatives will depend on the efforts of those who want to take them. The most encouraging aspect of the discussion is the openness to dialogue. If we can maintain that, we are doing better than most of the organisations that expel their whistleblowers.

There will be more on this in future *Whistles.*

See the enclosed flier about WBA's AGM, and the notice on page 5.

Whistleblowers Australia membership

Membership of WBA involves an annual fee of $25, payable to Whistleblowers Australia, renewable each June. Membership includes an annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/ discussion groups, plus input into policy and submissions.

If you want to subscribe to *The Whistle* but not join WBA, then the annual subscription fee is $25.

The activities of Whistleblowers Australia depend entirely on voluntary work by members and supporters. We value your ideas, time, expertise and involvement. Whistleblowers Australia is funded almost entirely from membership fees, donations and bequests.

Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone/Fax 07 5448 8218.