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

The Whistle

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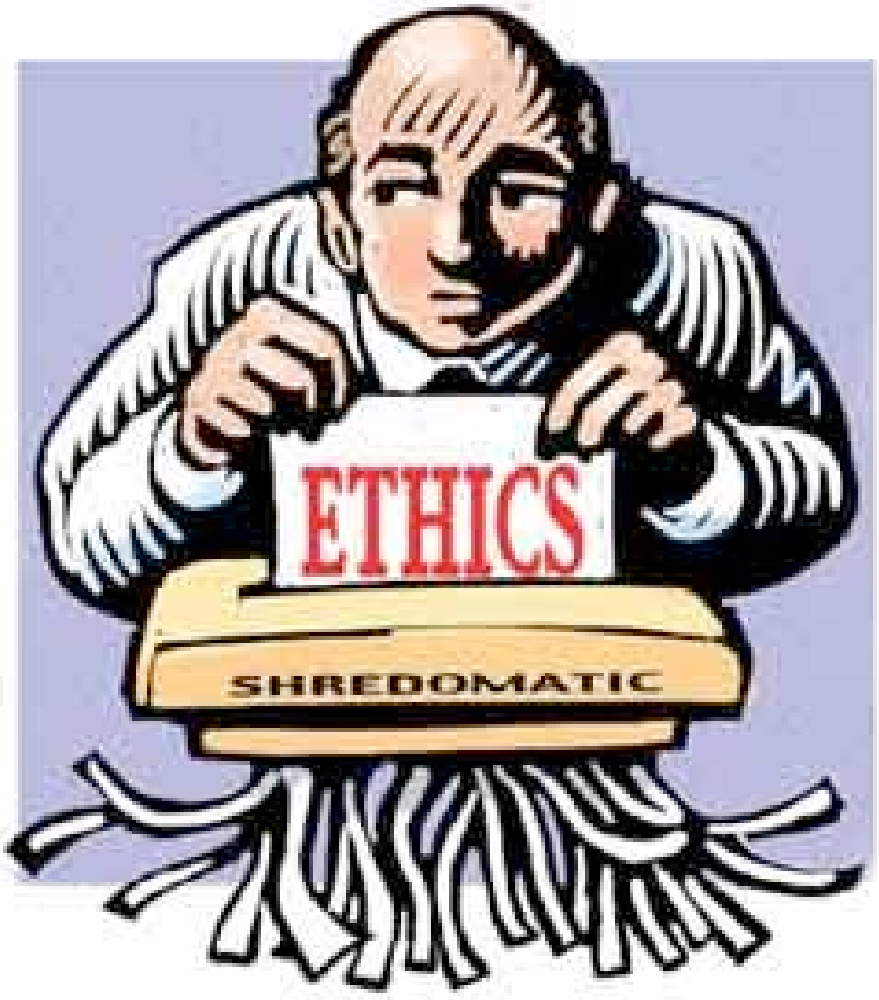


Media watch

Officialdom stands in the way of public's right to know

The federal Government and police seek total information control, argues

Christopher Warren

The Australian, 22 October 2007, p. 16

LAST week, Hedley Thomas, a senior journalist with this paper, was nominated for Walkley awards in two separate categories for a series of stories about Mohamed Haneef, the Queensland doctor arrested in July under the federal Government's anti-terrorism laws.

Meanwhile, the source of a critical component of those stories, Haneef's barrister Stephen Keim SC, has been reported to Queensland's Legal Services Commission for providing to Thomas the first record of interview between Haneef and officers of the Australian Federal Police.

The record indicated how shallow was the evidence against Haneef. It started an unravelling of the police case that led to the Director of Public Prosecutions dropping all charges against Haneef. The actions of Keim and the stories of Thomas resulted in prompt justice; they also saved the cost of a trial and prevented continued embarrassment to the AFP.

So you'd expect both would be sent on their way with the grateful thanks of all concerned. Not a bit of it. Instead, AFP Commissioner Mick Keelty has reported Keim to the Queensland Legal Services Commission, which has the power to have Keim struck off the legal register, to fine him up to $100,000, or to have him publicly reprimanded and his professional reputation traduced. This despite the fact that Haneef was entitled to a copy of the record of his interview, and entitled to do with it as he wanted.

The action against Keim can only be about something else: the continued campaign by AFP, with the active support of the federal Government, against the release of any information by anyone other than them. It's the only thing that explains why Keelty wants to drag this whole sorry business back into the light of public scrutiny.

It's of a pattern with the fact that the police, by their own estimate, have spent about 30,000 hours investigating government leaks, even when those leaks were manifestly in the public interest. As it happens there were rather a lot of leaks in the Haneef case before Keim decided to set the matter straight by revealing the truth — the whole truth — of what went on in the AFP interview room between the Queensland doctor and his interrogators.

The constant dripping of leaks against Haneef was designed to make him appear suspicious. Yet despite this attempt to convict in public opinion what could not be convicted in court, the source of these leaks appears never to have been investigated and there was no outrage from Keelty, or Attorney-General Philip Ruddock, or Prime Minister John Howard, over these leaks, legal or not.

But when the true record of interview with Haneef saw the light of day and the public was made aware of the mistakes made by AFP officers, and their economy with the truth, Keelty and Ruddock hit the roof.

Keelty speculated that Keim's principled action was in contempt of court (it wasn't) and said it undermined the judicial process, which it didn't. Ruddock said Keim's action was "inappropriate'' and "highly unethical'', and hinted that the DPP may "take a view'' towards legal proceedings.

But given that Haneef was entitled to do as he pleased with the record of interview, he'd have been stupid not to have released it to the press. As Keim has said, it's not often a defence counsel has access to a single document that so clearly shows the case against his client to be paper-thin.

We all know the outcome. Haneef was exonerated but remains in Bangalore, unable to return to continue his medical career after Immigration Minister Kevin Andrews cancelled his Australian visa. And yet Keelty continues to pursue Keim.

The Bar Association of Queensland says it cannot see a case against Keim. A letter supporting Keim has been signed by a who's who of Queensland lawyers along with the Australian Lawyers Alliance, the Queensland Law Society and the Queensland Council for Civil Liberties, which have commended the barrister as upholding the finest tradition of fearless representation.

So yet again we see a person with the courage to reveal information of crucial public interest facing crucifixion. We saw it last year in the case of Allan Kessing, who was found guilty of leaking, also to *The Australian,* information about serious lapses of security at our airports.

The resulting story prompted an investigation and a $200 million upgrade of our border security, something you'd imagine we'd all be grateful for. Instead, Kessing, who is appealing his conviction, was branded a criminal and faced a hefty bill for his defence. Happily in Kessing's case, Australian journalists and media organisations rallied round and raised money to help him pay his bill.

This year, the Media, Entertainment and Arts Alliance got together with News Limited (publisher of *The Australian*), Fairfax and several of this country's other large media organisations to form the Right to Know Coalition, to try to combat the culture of secrecy and spin that is making it ever more difficult to bring these hard stories to light.

Keelty's petulant referral of Keim to the Legal Services Commission is symptomatic of this culture. In place of this public petulance, Australia would be a better place if we saw serious action to protect journalists' confidential sources.

There has been much talk of shield laws and in some states there is limited protection for journalists who publish the fruits of leaked material. But the confidential sources, public-spirited individuals who risk their careers to bring vital information to light, are left vulnerable.

Christopher Warren is federal secretary of the Media, Entertainment and Arts Alliance.

Mates' fates

Until a confidential system is introduced to protect whistleblowers, the culture of drug use in elite sport is doomed to continue. By ***Shane Gould.***
The Bulletin, 2 November 2007

How can you think of of dobbing in your mates when they've been on your team, sung the national anthem with you, shared narrow plane seats and dingy hotels on tours, consoled you in loss, commiserated with you in injury and possibly named their first kid after you?

Whistleblowing in sport is a vexing subject. To "dob in" a fellow athlete may be the ultimate betrayal of a colleague, particularly in Australia, where mateship overrides authority and the rule of law. This is the essence of the Anzac spirit, a fundamental part of being an Aussie, providing a sense of belonging.

Rugby league footballer Andrew "Joey" Johns' footy mates and team administrators admit they knew about his drug abuse, but chose not to say anything about it. It's widely accepted in hindsight that they should have confronted the shamed player, but no one was willing to risk being shunned as an informer or face the discomfort and responsibility of the confrontation.

AFL champion Ben Cousins in WA was in a similar situation. Other players knew about his substance abuse; officials knew about it but excused it as a young bloke letting off steam and as a method of coping with the pressures of success. Elka Graham's recent disclosure of an elite swimmer offering her performance-enhancing drugs in 2004 was more of a "mouth fart" than whistleblowing. It was greeted with derision, because she told but — by not naming names — didn't tell.

"Fess up," people are saying. "We will make a law that forces you to inform on your mates." At first I agreed, but looking at the recent history of whistleblowing in corporate life and sport, I now think Elka is wise to not "fess up".

There is no system currently in place to support and protect whistleblowers in sport. Loyalty is a biological programming in young adults. To expect them to inform on their mates, or to make it a rule, would be committing developmental suicide.

It is accepted that it is a professional responsibility to be honest in sport and business. However, when it's time to dob in a dishonest mate, the risks are too high. Informers begin as insiders, but rapidly become outsiders. They are blacklisted, their health deteriorates, and according to some statistics, most lose their job within two years of their revelation.

Whistleblowing could be an effective weapon in the war against drugs in sport. Getting drugs out of elite sport is important, because all youth sport is modelled after elite sport, and the dream of ascending to elite sport from youth sport is a part of youth sport culture and marketing. Putting together a system of whistleblower protocols and protections should be done as soon as possible. We don't know how many athletes have been on the verge of coming forward and then have changed their minds. They need confidentiality, and the process has to happen behind the scenes and out of the media to protect both the whistleblower and the reputation of the accused.

Athletes have reason to be sceptical of the system, because the confidentiality that is the basis for participation in the drug testing system has been violated, as with revelations early this year about alleged drug test irregularities from Ian Thorpe, which were later cleared.

It is sporting organisations, whose ethos is determined by their leaders, that need to be primarily responsible for upholding the values, ethics and rules of sport. However, unless there is aggressive support and protection of whistleblowers in sport, no one will talk.

In order to survive, sport may need to take a financial and TV ratings hit, to make necessary changes now, to make bad behaviour unacceptable. Not even "three strikes you're out". Not even a second chance when it comes to illegal and antisocial behaviour. Legalisation of performance-enhancing drugs is emphatically out of the question, and there needs to be zero tolerance of athletes using all illegal drugs.

Leading sporting bodies have an opportunity to jump ahead of the rest of society and be a model by making it safe and honourable to inform, with severe punishment for false and mischievous claims.

Shane Gould won three swimming gold medals at the 1972 Munich Olympics.

Out in the cold: the man who knew too much

Linton Besser
Sydney Morning Herald,
21 December 2007, pp. 1, 4

LARRY VINCENT had a story to tell at RailCorp that no one wanted to hear.

Hired in September last year to oversee the recruitment of contractors for billions of dollars of railways work, he uncovered what he believed were unethical and possibly corrupt practices.

After trying to alert RailCorp's Workplace Conduct Unit, its Internal Audit Investigations Unit, and even RailCorp's chief executive, Vince Graham, the human resources consultant says he was pushed out of the organisation.

His contract was not renewed. An official statement he had tried to lodge with the internal audit unit took so long to be prepared that he had to sign it three days after he left the organisation.

Mr Graham never responded.

"When I started there I was told that at RailCorp if you say anything, they will put you through the shredder," Mr Vincent told the Herald. "Well, it's true."

RailCorp did conduct an investigation. But investigators based their inquiries on a one-page letter Mr Vincent had sent to Mr Graham — not the seven-page affidavit signed by an internal audit officer. Mr Vincent was never interviewed about his allega-

tions, and the internal inquiry was closed with no findings of corrupt conduct.

But the full affidavit provided details of a scheme within RailCorp where middle managers repeatedly extend lucrative short-term contracts without proper approval. These recruitment practices were so irregular that Mr Vincent believed they could be potentially corrupt.

Sources have told the Herald that the renewal of contracts with values too low to attract attention from senior management is common throughout RailCorp.

Mr Vincent said others in Major Projects were also uneasy about the unusual contracting. One had expressed his concerns in a memo to the division's general manager, Andrew Addinall, but refused to email it to Mr Vincent because "its contents would be so potentially ICAC-sensitive".

RailCorp has denied the document was sensitive. Its spokeswoman, Jo Fowler, said it was part of an open review of "contractor engagement procedures".

Mr Vincent also learned of a document kept secret within a tight circle in RailCorp's Asset Management Division — a spreadsheet of contractor payments known as "The Book". Its existence has been independently verified by the *Herald.*

Mr Vincent said in his statutory declaration: "The contractors spreadsheet lists payments to contractors within the Major Projects Division and contract period details … an audit will uncover payments made to contractors that are without the proper delegations and some should have been forwarded to the RailCorp board for approval."

Ms Fowler said "payments have not been made to contractors without proper delegation in the Major Projects Division". She declined to comment on the existence of "The Book".

But RailCorp documents obtained by the Herald show irregularities were widespread. In November, for example, there was a dispute within the division over a $42,313 invoice for recruitment services, sent in by AndersElite, one of the 900 human resource suppliers attached to RailCorp.

In an email to senior staff on November 17, Mr Addinall said the "allegedly provided" services had not been clarified. "My quick analysis of the information provided to me is that AndersElite does not have a written contract with RailCorp," he wrote. "Do any of you believe that you have created a verbal contract with AndersElite?" Despite the dispute, Mr Addinall's department continued working with the firm.

What shocked Mr Vincent most was his treatment by Mr Graham. Years earlier they had been friends at National Rail. But Mr Graham did not respond to four emails and letters from Mr Vincent over several months. Worse, he refused to see Mr Vincent, who says he had scheduled a meeting with the rail boss and waited fruitlessly for 40 minutes outside his office.

Ms Fowler maintained Mr Graham "fully discharged his responsibilities in relation to allegations made by Mr Larry Vincent".

Who would be a whistleblower in this world of bureaucratic paranoia

Kelvin Bissett
Daily Telegraph (Sydney),
17 September 2007, p. 18

SOMEONE had to take the rap for an embarrassing leak about the triple-0 service and pizzas published in this newspaper last year, NSW Police top brass decided.

The someone selected, based on what was clearly inadequate evidence, was 40-year-old civilian communications officer Donna Coles.

The persecution of Coles began soon after July 19, 2006, when *The Daily Telegraph* revealed triple-0 operators were being offered pizzas, shopping vouchers, chocolates and movie tickets to take calls faster.

Journalist Gemma Jones wrote that operators winding up calls faster than average were granted gold stars under a system more likely to motivate six-year-olds.

The story raised chuckles, but the whistleblower — whoever it was — wanted to make the serious point that the lives of both police and victims of crime were at risk.

An example was offered where police could have been in danger.

On June 5, a frantic call was taken at the Lithgow centre from the owner of an Artarmon service station. An axe-wielding maniac was attacking his premises with intent to rob.

The operator did not take details of the weapon, leaving police unaware of what they were dealing with.

The call lasted one minute, 32 seconds — much faster than the average 3 1/2 minutes.

For 14 months, Coles, a stepmother to six children, faced the full police investigative artillery despite denying she had leaked information.

She was dragged through court on a criminal charge, faced losing her job for professional misconduct, went on extended stress leave and had her personal records ransacked.

The matter was finally closed last week when she was told in writing there would be no further action.

It's a distressing tale about the widening paranoia in government agencies over leaks. Huge sums of taxpayer funds are being spent prosecuting ordinary people just trying to do their jobs.

Earlier this year, Customs officer Allan Kessing was given a suspended jail sentence after leaking to *The Australian* reports containing allegations of drug trafficking and other crimes at airports.

Publication of the material led to a $200 million upgrade of airport security — but Kessing was prosecuted anyway and left with legal bills of $44,000.

In June, two *Herald Sun* journalists were convicted of contempt and fined $7000 for refusing to identify the source of a leak about a plan to cut war veterans' benefits. Public servant Desmond Kelly was convicted of leaking the story, but was later cleared on appeal.

Coles found herself under investigation soon after publication of the story, headlined "Prizes to rush triple-0 callers".

The next day, at the Sydney Communications Centre, Coles and a colleague decided to track down the June 5 recording of the service-station attack to hear for themselves what the fuss was about.

It was this act that put Coles under suspicion. She did not have authorisation to access the Verint recording system, although her colleague Andrew Drummond did.

Gemma Jones refuses to identify the source of her story, as is standard practice in journalism. But for the record, she says it wasn't Coles.

By January 2007, Coles had been charged under Section 308H(1) of the Crimes Act for making an unauthorised access.

She pleaded not guilty.

On July 27, magistrate Ian Barnett dismissed the charge.

Public Service Association industrial officer Geo Papas says police bungled by pursuing Coles.

"The irony was that she wasn't even the whistleblower," Papas says.

"Ms Coles appeared to be a test case. They decided to target a civilian first before targeting the sworn staff.

"They wanted to send a loud, clear message to the sworn staff."

In response to questions about the case, a police spokesman rejected any suggestion that the action against Coles had anything to do with leaks to the media.

Meanwhile, the axe-wielding thief who attacked the BP service station has never been apprehended.

Explosion in fraud leads to call for culture change to support whistleblowers

Gareth Vorster
Personnel Today, 22 October 2007

Human resources (HR) experts have warned that companies must develop an anti-fraud culture in the workplace so that whistleblowers feel safe to come forward.

The warning follows the annual Global Economic Crime Survey by business consultancy PricewaterhouseCoopers, which revealed that the average cost to UK businesses affected by fraud had doubled to £1.75m in the past year.

The survey found a 21% increase in the implementation of whistleblowing systems, but half of the 5,400 respondents said they were effective, and only 3% of serious incidents were detected by such systems.

Research last month by accountancy firm BDO Stoy Hayward found that employee fraud costs UK businesses £4m a day, with the biggest scams including bogus invoices, manipulated accounts and ghost workers on the payroll.

Stuart Little, commercial litigation partner at Shoosmiths Solicitors, said recruitment and IT were the most vulnerable sectors.

Jon Ingham, director of HR consultancy Strategic Dynamics, said: "The right internal procedures and controls will help to manage the problem, but if people are going to engage in fraudulent activities, they will soon find other means of doing this once one activity is controlled. The key is to create a work culture in which whistleblowers are happy to come forward."

The Chartered Institute of Personnel and Development added that it was important for employees to feel that confidentiality would be respected during whistleblowing procedures.

Asleep on the job

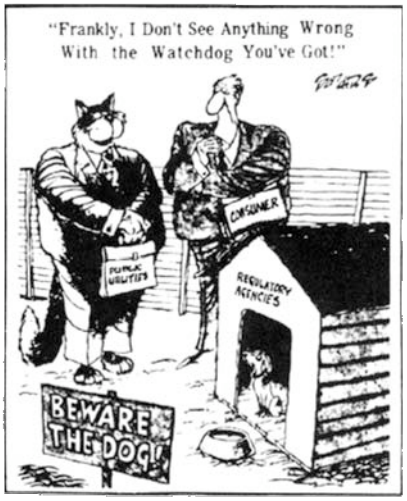
USA Today, 11 October 2007, p. A10

This March, an anonymous whistleblower sent a letter to the Nuclear Regulatory Commission, warning that guards at the Peach Bottom nuclear power plant in Pennsylvania were routinely sleeping on the job. The letter writer said he was writing on behalf of other guards who were tired of covering up for their colleagues. He begged the NRC to do something and even suggested five ways to catch the sleepers, who are supposed to be on constant alert to repel terrorist attacks.

For months, nothing happened. Then a frustrated guard surreptitiously videotaped several dozing colleagues and gave the tape to WCBS-TV in New York City, which aired it late last month. With that, all hell broke loose.

Exelon, the energy company that owns Peach Bottom, fired Wackenhut, the security company that provided the guards. The NRC, which said its initial investigation had been "unable to substantiate" the whistleblower's report, belatedly launched a high-profile probe. At a public meeting this week, officials conceded that 10 guards had slept on day and night shifts and that at least one supervisor had pressured would-be whistleblowers to keep quiet about it.

If this were an episode of *The Simpsons,* it would be amusing. But the failures here are real and sobering. The plant owner failed to supervise its security contractor, the security firm failed to supervise its guards and the NRC failed to do its regulatory job, even when an insider provided a road map.



Sleeping guards and other security issues have occurred at other plants in recent years. Sometimes NRC inspectors have aggressively corrected the problems on their own, but too often it has taken whistle-blowers, the media, members of Congress or outside groups to press for action.

This is troubling at a time when the nation's need for energy, and concerns about global warming, are sparking a nuclear renaissance. That means utilities will be building and operating more plants. It's important that they be better managed and supervised than the Peach Bottom incident suggests they sometimes are.

Since 9/11, nuclear power plants have become a security priority for the simple reason that a successful terrorist attack on one could be catastrophic. The Project on Government Oversight, an independent watchdog group that has long followed nuclear plant issues, estimates that it would take terrorists just 45 seconds to go from the Peach Bottom plant's outer fence to its spent fuel pool, where an explosion and fire

could create a radioactive plume stretching for miles.

The obvious severity of that threat does nothing to make the guard work less tedious, however, and under current regulations, guards can work as much as 72 hours a week, or six 12-hour shifts. It's little wonder that the Peach Bottom whistle-blower's letter complained about guards coming to work "exhausted." After an absurd years-long rule-making process, the NRC is finally planning to trim hours somewhat, but guards will still be able to work shifts long enough to sap their attentiveness — especially if they're not properly supervised.

The Peach Bottom case is a stark example of what has to go right in the crucial effort to keep nuclear plants safe. In this case, the plant owner, the security company and the NRC all failed. It shouldn't take a hidden camera to make them do their jobs.

Wiretapping, whistleblowing and IT ethics

AT&T whistleblower Mark Klein has got Mark Gibbs thinking
Computerworld, 9 November 2007

Recently a retired AT&T employee named Mark Klein announced at a Capitol Hill press conference that he had evidence that "An exact copy of all Internet traffic that flowed through critical AT&T cables … was being diverted to equipment inside the secret room."

This secret room, apparently managed by the National Security Agency, was on the sixth floor of AT&T's San Francisco offices. Moreover, this room isn't, so the story goes, unique. There are similar rooms in many other AT&T offices around the country.

Klein had the luxury of becoming a whistleblower after any risk to his job had passed, but he kept copies of documentation to prove his case. I suspect had he blown the whistle while he was at AT&T (and assuming there was an effective opportunity for whistle blowing at the time) he would have been out on his ear.

This story got me thinking about a couple of things. First, this confirms what we had a lot of evidence to support already: that the administration's illegal wire tapping activities cover more than the telephone system and is anything but selective. And it is pretty safe to say that, just as with the telephone surveillance, the key issue with the monitoring of Internet traffic is analyzing connections rather than content: That is, figuring out who is talking to whom.

Why does this matter? Most of us can say, "I have nothing to hide so why should I care?" and we'd be, in principle, correct. But the problem is the government easily could get it wrong. What's more, they are collecting data on everyone and, once they have the data, whose to say what future purposes might crop up to justify putting it to use? That is one slippery slope my friend.

The second thing I started thinking about was ethics. When it comes down to your behavior in the IT world, can you say you behave ethically? Do you have a well-developed sense of what is right and wrong?

Even more importantly, are you willing to act when you know of misbehavior or do you just ignore it, hoping it will go away and leave you alone? These were things you didn't do anything about even though your conscience was bothering you … so, why didn't you blow the whistle?

I'm guessing many of you have witnessed or even been involved in things that you knew were wrong and sometimes this might have been in the category we could call "minor" stuff. Minor stuff are all those small issues but where it is arguable that reasonable self-interest gives you a justifiable "out."

For example, say you caught your boss liberating a toner cartridge for home use. Is it your responsibility to take action when it could result in you having to look for a new job?

On the other hand I'll bet some of you have been party to bigger issues, things that were wrong or decisions that you knew would lead directly to things that would be wrong in a major way. For example, if you found out that the same devious boss who acquired the toner cartridge was getting thousands of dollars in kickbacks by steering server purchases to a particular vendor, would you feel compelled to do something?

So my question is, what are you willing to do when push comes to shove, when it is something so big and so wrong you can't sleep at night knowing you didn't do the right thing?

If you were in Klein's shoes and you weren't retired and speaking up could cost you your job, would you have kept quiet? We now know there must have been a number of AT&T executives who were completely comfortable with the ethics of allowing the NSA to perform covert wire taps. If you were one of those people, how do you justify your silence? If you weren't, are all of your ethical judgments above board?

U. of Oregon settles whistle-blower suit over foreign-student program

John Gravois
Chronicle of Higher Education, 28 November 2007

The University of Oregon has settled a lawsuit filed by a former professor who accused administrators and faculty members of retaliating against her after she blew the whistle on a problematic graduate program for foreign students.

The university agreed to pay $500,000 to Jean Stockard, formerly the chairwoman of its department of planning, public policy, and management. Ms. Stockard's lawsuit sought a million dollars in damages.

According to settlement documents released last week, the university denies any wrongdoing in Ms. Stockard's case.

In 2005, Ms. Stockard fielded several complaints from South Korean graduate students enrolled at the university's Institute for Policy Research and Innovation, a center run by Michael Hibbard, a professor in Ms. Stockard's department (The Chronicle, March 31, 2006).

The students said they were being billed thousands of dollars for academic services that should have been included in their tuition. They also complained that they were not receiving enough individual attention. Ms. Stockard reported the complaints

to administrators, who investigated the institute and called for changes in the program.

Mr. Hibbard told *The Chronicle* last year that the students' complaints stemmed from a "cultural misunderstanding" surrounding independent academic work. After the problems with the institute were dealt with, however, Ms. Stockard said, she was the one who took flak from the university.

In her lawsuit, which was filed in June 2006, she said she was pressured to step down as head of the university department she led because she pursued the Korean students' complaints. Ms. Stockard said she retired after what she calls further "retaliation" from administrators and other members of her department, including Mr. Hibbard and his wife. Ms. Stockard's lawyer, Craig Crispin, said he saw the settlement as a tacit admission that the university was wrong. He wrote in an e-mail message that the former professor "feels she did the right thing throughout and felt no alternative to standing up to the administration regardless of the costs."

Speaking on behalf of the university, the Oregon Department of Justice denied Mr. Crispin's interpretation of the settlement. "The settlement agreement is not an admission of wrongdoing or unlawful conduct by the university or the state," said Pete Shepherd, a deputy attorney general in the state.

Force sues former staffer over alleged leaks

Gerard Ryle and Jacquelin Magnay
www.rugbyheaven.com, 23 November 2007

The Australian Rugby Union has failed to act on serious allegations of assault, potential financial irregularities and that a bizarre witch-hunt was conducted against a suspected whistleblower at the Western Force Super 14 club.

The allegations involving the Force were detailed in information put to the ARU last week and follow raids on a private business and the home of a former Force employee.

The raids were conducted after the Force searched computer records of some employees in a failed attempt to learn if anyone leaked information to the Herald about serious wrongdoings at the club. The club then obtained search warrants for the home and new workplace of a former employee and began civil legal action against him.

Western Force officials initially vehemently denied stories in the Herald earlier this year that outlined more than $300,000 in secret payments that were made to Wallabies players last year in breach of the governing body's protocols.

After being confronted by the ARU, the club admitted guilt and was fined $150,000. The secret payments dated back to the formation of the club, when it tried to recruit top-line players.

A lawyer from Freehills in Perth, Dan Dragovic, acting for the former Force employee, yesterday said: "Rugby WA [The Western Force] is suing my client. They are alleging that he breached certain obligations of confidentiality they say were owed to them, and we have denied those allegations."

The allegations of assault and potential financial irregularities were made separately to the ARU and do not form part of the civil action. The allegations were made by the suspected whistleblower after he went to the ARU for help.

ARU deputy chief executive Matt Carroll said he received pieces of information from the man verbally, but that details needed to be on the record and in writing before the ARU would take action.

But Carroll said: "I have no details, documents, or information — unless they are under investigation by the police, but I don't know details of the activities that have occurred. He didn't come forward as a whistleblower to the ARU, he merely told us — that the Western Force is taking legal action and the other matters were an issue for the police, and therefore that is where it should rest."

Carroll said there had been no meetings scheduled with the Force over the allegations, but said the ARU was continuing to monitor player contracting issues with the club. The ARU was waiting for the Force's internal audit on its player contracts, to be submitted to the ARU by mid December.

"We can ask for further details if we are not satisfied with the response they provide," Carroll said.

The Force made the secret payments to three Wallabies players in 2006 and possibly as late as January 2007, despite the club's protesting that the payments related only to its inaugural season.

Nathan Sharpe was paid about $200,000, Scott Fava about $80,000 and Cameron Shepherd about $20,000. Former player Chris O'Young was guaranteed the club would find him outside employment worth about $20,000, and he earned most of that in a job secured for him by the Force.

Although the deals breached ARU protocols, there is no suggestion the players were aware of any potential breach. Under the protocols, teams are generally allowed to pay players $110,000 a year, in addition to a set of agreed extras such as cars and housing allowances. Internationals also receive additional wages from the ARU.

Furthermore, no state union is to be involved in facilitating, procuring or arranging third-party deals as an inducement to sign a player without ARU approval.

But during early 2005 the Force recruited several players and guaranteed to find them paid employment, outlining the income players would receive. The club guaranteed to pay the players if the employment fell through, which is what occurred.

The money was hidden in the Super 14 club's annual accounts and did not appear as "player payments", even though it was paid to three Wallabies on the Force's books.

The Western Force's ability to attract star players has long drawn suspicion from the ARU and other Super 14 clubs. It has been central to the team's rapid improvement. The

club rose from wooden spooners in their first year to the second most successful Australian team last season.

But the payments also had an adverse effect at the Western Force, where several employees have been made redundant during the past 12 months as the club struggles to find broad support in AFL-obsessed Perth.

False silence has everyone talking

Gerard Henderson
Sydney Morning Herald,
9 October 2007

Seldom in the history of public debate have the allegedly silenced been so vocal. Last Friday the ABC Radio National Australia Talks program ran a session from the recent Brisbane Writers Festival. It was one of those familiar taxpayer-subsidised events where members of the left intelligentsia gather to have their prejudices confirmed.

On this occasion the Australia Institute executive director, Clive Hamilton, essentially agreed with the social researcher Hugh Mackay who essentially agreed with the journalist David Marr about contemporary Australia. Needless to say, the audience had a ball. Especially when Hamilton argued that pokie taxes at the Rooty Hill RSL should be increased to fund 1000 public intellectuals. In certain circles, there is a lot to be said for redistribution of income which takes money from lower-income earners in the suburbs and uses it to fund inner-city types who like to describe themselves as public intellectuals.

Hamilton and Sarah Maddison are the editors of *Silencing Dissent* (Allen & Unwin, 2007), which argues that the Howard Government is controlling public opinion and stifling debate. In keeping with the forum's format, Marr agreed with Hamilton that John Howard was intent on silencing his critics. No one in the audience appeared to query how this could be the case when both men had a gig at the Brisbane Writers' Festival and their thoughts would be preserved for posterity, courtesy of the taxpayer-funded public broadcaster.

It was much the same message on Sunday night when SBS ran an episode of Pria Viswalingam's documentary series titled Decadence. Early in the program, footage was shown of the Nazi death camp at Auschwitz with the now familiar link to modern Australia. Also, the presenter primarily interviewed members of the left intelligentsia who agree with him that Australia has become a decadent democracy. Then the academic Robert Manne joined Hamilton in alleging that dissent was not allowed under the Howard Government.

The very existence of Viswalingam's taxpayer-subsidised documentary indicates that, whatever its intentions, the Howard Government has not prevailed in the culture wars. However, the likes of Hamilton and Manne used their interviews on prime time television to argue that people like them are not heard.

The opinion polls provide the only scientific evidence about the likely outcome of the forthcoming election. They indicate that the Howard Government is heading for a devastating loss. Moreover, Kevin Rudd and many Labor candidates — especially Maxine McKew, who is hoping to defeat the Prime Minister in Bennelong — have experienced a most friendly media throughout the year. This would not have been possible if Howard either controlled public opinion or stifled debate.

The argument that the Howard Government is silencing dissent has now gone so far that ministers are criticised for taking on their critics. No such standard was ever required of the former governments headed by Paul Keating, Bob Hawke, Malcolm Fraser and Gough Whitlam.

Last Tuesday the *Herald* and *The Age* gave page one coverage to a report called Australia@Work, which was funded by Unions NSW and the Australian Research Council. The study, which is critical of the Howard Government's industrial relations reforms, was soon attacked by the Workplace Relations Minister, Joe Hockey, and the Treasurer, Peter Costello. They drew attention to the fact that the project was partly funded by the trade union movement and that two of its authors, Brigid van Wanrooy and John Buchanan, have worked for trade unions in the past.

Hockey and Costello were soon hit with the allegation that they were attempting to silence dissent — in spite of the fact that their comments were accurate. Writing in The Age last Thursday, journalist Michael Bachelard went so far as to suggest that the Howard Government had somehow sanctified the report because it was partly funded by the Research Council and because van Wanrooy had once worked in the Commonwealth Public Service "under Peter Reith", the former Howard Government minister for industrial relations. The previous morning Buchanan had run a similar line when interviewed by Fran Kelly on Radio National Breakfast.

The fact is that funding by the council does not imply Government support for the findings of publicly financed research. What's more, the fact that someone once worked in the public service has no connection whatsoever with the views of any minister — Coalition or Labor. It is disingenuous to imply otherwise.

The Australia@Work report was severely criticised in *The Australian* last Friday by academics Sinclair Davidson and Alex Robson. The important point about Buchanan and his team at Sydney University is not that the report was partly funded by Unions NSW or that he is on record as being a Howard-hating socialist (witness his Politics in the Pub speech of February 18, 2005). Rather, what matters about Buchanan is that he is a long-term opponent of industrial relations reform, under both the Howard and Keating governments (see his article in the June 1999 issue of the *Journal of Australian Political Economy*).

In other words, Buchanan's dissent has not been stifled under either the Keating or Howard governments. Nor was Manne ever silenced — not even when he wrote in 1992 that the Hawke Labor government had "put Australia in a situation from which it is genuinely difficult to foresee a non-disastrous exit". Nor was Hamilton quietened when, in 1991, he called for a "healthy" inflation rate of 7 to 8 per cent.

The fact is that many one-time opponents of the economic reform

process remain credible today because neither Labor nor the Coalition ever implemented such advice. This applies to Hamilton, Manne, Buchanan and more besides. But the refusal of a government to follow (flawed) advice does not amount to censorship. Just good sense.

Gerard Henderson is the executive director of the Sydney Institute.

See Peter Bennett's letter to Gerard Henderson on p. 10.

Encourage people to be noisy and nosy: it promotes wisdom

An extract from
Jeffrey Pfeffer and Robert I Sutton,
Hard Facts, Dangerous Half-Truths, and Total Nonsense: Profiting from Evidence-based Management
(Boston: Harvard Business School Press, 2006), pp. 105-107

Here is a trick question. Imagine that you just had a major operation and are given the choice: do you want to stay in a nursing unit that administers the wrong drug or the wrong amount, or forgets to give the right drug, about once every 500 patient days, or would you rather be in a unit that blunders 10 times as often? In the mid-1990s, Harvard Business School's Amy Edmondson was doing what she *thought* was a straightforward study of how leader and coworker relationships influence errors in eight nursing units. Edmondson, and the Harvard physicians funding her research, were flabbergasted when nurse questionnaires showed that the units with best leadership and best coworker relationships reported making *10 times more errors than the worst!*

Puzzled but determined to understand this finding, Edmondson brought another researcher to observe these nursing units. Edmondson didn't tell this second researcher about her findings, so he wasn't biased. When Edmondson pieced together what this researcher observed with her findings, she realized that better units reported more errors because people felt psychologically safe to do so. In these units, nurses said "mistakes are natural and normal to document" and "mistakes are serious because of the toxicity at the drugs, so you are never afraid to tell the nurse manager." In the units where errors were rarely reported, nurses said things like "The environment is unforgiving, heads will roll." The physicians who helped sponsor her research changed their view of medical errors 180 degrees. They no longer saw errors as purely objective evidence, but partly as a reflection of whether people are learning from and admitting mistakes or trying to avoid blame and, in the process, possibly covering things up.

Edmondson and her colleagues have since done multiple studies on how hospitals, surgical teams, doctors, and nurses learn from problems and errors, which reveal much about talents and behaviors that promote wisdom. Especially pertinent is a study of nurses that examined 194 patient care failures, everything from problems caused by broken equipment to drug treatment errors. Edmondson and colleague Anita Tucker concluded that those nurses whom doctors and administrators saw as *most talented* unwittingly caused the same mistakes to happen over and over. These "ideal" nurses quietly adjust to inadequate materials without complaint, silently correct others' mistakes without confronting error-makers, create the impression that they never fail, and find ways to quietly do the job without questioning flawed practices. These nurses get sterling evaluations, but their silence and ability to disguise and work around problems undermine organizational learning. Rather than these smart silent types, hospitals would serve patients better if they brought in wise and noisy types instead.

Table 4-2 lists these talents of wisdom. All of these characteristics help people act on what they know, and keep improving their own skills, peers' skills, and organizational practices and procedures. The crux is, if you want better performance instead of the illusion of it, you and your people must tell everyone about problems you've fixed, point out others' errors so all can learn, admit your own errors, and never stop questioning what is done and how to do it better. These actions can annoy doctors and administrators — or any other authority figure — who prefer quiet and compliant underlings, but if we want organizations that do as much good and as little harm as possible, these talents are essential.

TABLE 4-2
The talents of wisdom: people who sustain organizational learning

Noisy complainers	Repair problems right away and then let every relevant person know that the system failed
Noisy troublemakers	Always point out others' mistakes, but do so to help them and the system learn, not to point fingers
Mindful error-makers	Tell managers and peers about their own mistakes, so that others can avoid making them too. When others spot their errors, they communicate that learning — not making the best impression — is their goal
Disruptive questioners	Won't leave well enough alone. They constantly ask why things are done the way they are done. Is there a better way of doing things?

Source: Amy G. Edmondson, "Learning from mistakes is easier said than done: group and organizational influences on the detection and correction of human error," *Journal of Applied Behavioral Science* 32 (1996): 5-28 and Anita L. Tucker and Amy G. Edmondson, "Why hospitals don't learn from failures: organizational and psychological dynamics that inhibit system change," *California Management Review* 45 (2003): 55-72.

Bennett to Henderson

(This letter refers to Gerard Henderson's 9 October article in the *Sydney Morning Herald,* reprinted on p. 8 of this issue of *The Whistle.*)

Dear Mr Henderson

Re your criticism of complaints about silencing public opinion, I think you missed the point. The sheep are bleating but the lambs are silent.

The academic and journalistic sheep are bleating about the stifling of public criticism and rightly so.

They are not bleating about their right to criticise Mr Howard and his government and his culture of imposed silence.

They are bleating because the right to complain or disclose wrongdoing or expose unfairness is being eroded because Mr Howard has created a culture of silence and he is maintaining it with a fanatical passion.

Mr Howard knows he can't stop the academics and journalists from commenting — so he has taken the soft option and silenced the sources of complaint. He has taken rights of freedom of information, communication and association from ordinary workers and employees. He has eroded employment and social protections previously available to people and left them exposed to easy retaliation and victimisation. This insidious process commenced as soon as he came to power by giving agency heads power to control staff. Compliant staff are rewarded while staff who are critical are easily punished. The litany of schemes to break apart and silence and instil fear into any voice of opposition would do Stalin proud.

Mr Howard has created a national culture of silencing the lambs.

The academics and journalists are bleating because workers, employees and citizens who want to blow the whistle about employer abuse of the industrial system are threatened with dismissal if they complain. Or they aren't hired because they are the type who will resist oppression. Or they aren't promoted because it is easier to control junior workers than have to deal with persons with more authority. Or they will have their pension or allowances reviewed if they complain.

Unfortunately this oppressive culture of silence is flowing from Howard's Government down to state governments, local governments and especially into private enterprise.

Now public servants in hospitals, ambulance services, police forces, military forces, customs, and so on can be fined $10,000 for using an email to criticise someone. Simply using an email to direct someone to *Hansard* can be used to sack an employee. Or they can be prosecuted (and urged to be goaled for 2 years) for telling the public that there are criminals working at Sydney Airport.

Workers and vulnerable members of the public are the lambs and Mr Howard is fanatical about silencing those lambs.

Peter Bennett
Whistleblowers Australia
10 October 2007

Peter Bennett is president of Whistleblowers Australia. Gerard Henderson did not reply to this letter.

Evil prospers when good people do nothing

Kim Sawyer
On Line Opinion, 13 July 2007

In March 1964, a woman was murdered in a street in New York City. There were 38 witnesses to the killing of Kitty Genovese, but no one intervened. Only one called the police, but it was too late for Kitty Genovese. Thirty-eight people did not want to get involved. They were the silent bystanders. The killing of Kitty Genovese shocked the United States. It revealed a society so anonymous and devolved that Good Samaritans apparently no longer existed. The Genovese case generated a substantial reaction, and led to the framing of Good Samaritan laws which remain as statutes of most US states.

Good Samaritan legislation is an attempt to align the civil law with a citizen's public duty. Most Good Samaritan legislation is protective rather than affirmative. In the US, Canada and Europe, Good Samaritan statutes exempt from liability a person who voluntarily renders aid to another in imminent danger. The Samaritan is protected from any unintended consequences of their action. Only three US states have affirmative Good Samaritan legislation, which require bystanders to call the police or render assistance to an injured person. Good Samaritan laws then aim to protect the Good Samaritan without punishing the bystander who doesn't act. Ironically, however, it is the silent bystander that the civil law is designed to deter. When a Michigan student, Kevin Heisinger, was beaten to death in the presence of five silent bystanders at a bus terminal in 2000, two Michigan legislators introduced legislation to require people witnessing such a crime to be required to call police immediately. Analogous to the Genovese case, it was the inaction of the bystanders that prompted legislators to act.

No one knows more about the importance of the bystander than the whistleblower. For the whistleblower, the administrator who won't listen, the regulator who won't regulate and the fellow employee who won't assist become the silent bystanders who determine the whistleblowing problem. It is no coincidence that the maxim of Whistleblowers Australia is the often repeated quote attributed to Edmund Burke that evil prospers when good people do nothing. The consequences of inaction are often high. A whistleblower informed NASA of problems with the space shuttle more than a year before the Challenger disaster, a whistleblower informed regulators of the problems at Enron more than a year before its collapse and a whistleblower informed APRA of the problems at HIH more than three years before its collapse. Those who don't take action rarely pay a price. Usually, it is the whistleblower who pays the price through loss of employment and discrimination; they pay the price for the inaction of others. The recent case

of Alan Kessing, the customs official, who blew the whistle on security concerns at Australian airports, amplifies the point. Kessing acted when others would not. He leaked a report to a newspaper. This generated an inquiry which led to a complete overhaul of airport security. Last month, Kessing was convicted and given a suspended prison sentence for leaking the report. He paid the price for the inaction of others.

Recent events in Melbourne have provided insights into the bystander problem. The excuses offered for the inaction of Alan Didak are the same excuses that most silent bystanders use, the risk in speaking up, the principle of not dobbing and, finally, that we can never anticipate the consequences of inaction, so we can't be blamed for those consequences. No one could envy the position of Didak, but he chose to be silent.

It is unlikely that any legislation can induce bystanders to do their public duty. We can protect Good Samaritans through legislation, we can possibly require bystanders to call police, but it is difficult to prescribe that someone must render assistance. The balance between the bystander who acts and the bystander who doesn't act is a cultural problem. In Australia, we have established a culture where the public duty is not priced highly. Clearly, it is irrelevant to many. Until, of course, they need a Good Samaritan to help them.

Kim Sawyer is a member of Whistleblowers Australia.

Tempted as I might just be
To blow the whistle upon thee.
Before I do I think and rate
The options of my own poor fate.

The Ruddock FoI referral

Peter Bennett

At the end of September 2007, Attorney General Philip Ruddock asked the Australian Law Reform Commission (ALRC) to review Freedom of Information legislation. This referral is binding despite the Howard government having lost office.

Item 1. Ruddock refers to "the need to balance the public interest in making information available and the public interest in protecting certain information". However the recent government-inspired prosecution of Allan Kessing (ex-Customs officer accused of informing the public that they were at risk because of lack of security at Sydney Airport) challenges the credibility of this objective. The prosecution was "inspired" by the government because the Customs Service had already decided there was no case to answer. So the government stepped in and the Director of Public Prosecutions suddenly decided to prosecute Kessing.

So does the government really want to balance the public interest or just find yet another way to protect the government's interests? Setting up an ALRC Inquiry into FoI that will not produce a result till the end of 2008 shows just how concerned the government is about sorting the mess. The problems have been identified by every public commentator in Australia, by the legal profession and by many other public interest organisations, including Whistleblowers Australia. Yet the government wants to wait for more than 14 months before doing anything productive.

Why not start by simply issuing a directive that government agencies comply with the "Brazil direction"? It has been in force since 1985, yet no agency complies. It requires that agencies release information unless "real harm" would ensue. Why didn't Ruddock institute prosecutions against public servants who failed to comply with that direction? He had the power to do so under the Judiciary Act.

The obvious answer is that the government was happy with the status quo and went ahead with this referral just to postpone the inevitable.

Item 2. Of course it would be great to harmonise all the FoI legislation in Australia. The referral suggests this is a matter to be considered.

The obvious time delays that such a project would need would be grounds enough for concern. However there is a more worrying aspect. Would the harmonisation mean that all Australian FoI legislation would be rendered down to the pathetic status of the Federal FoI Act? It would be logical for the Commonwealth to offer to create a national act by incorporating the salient parts out of all the various FoI Acts in Australia. The Commonwealth could then promote this national act for use universally.

But the Commonwealth has a 10-year history of dismantling the Commonwealth FoI Act and any vestige of open government. Therefore having the Commonwealth with its festering finger in the pie will be more likely to diminish the already deficient quality of all Australian FoI acts.

Wouldn't it be nice if the government actually got serious and stopped pretending? The ideal would be for the Auditor General to assemble a group of relevant eminent persons to construct a draft national FoI act.

Terms of Reference
REVIEW OF THE FREEDOM OF INFORMATION ACT 1982
I, Philip Ruddock, Attorney-General of Australia, having regard to:

• the rapid advances in information, communication, storage and other relevant technologies;

• State, Territory and overseas legislation in relevant areas; and

• the need to balance the public interest in making information available and the public interest in protecting certain information;

refer to the Australian Law Reform Commission for inquiry and report pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996,* matters relating to the extent to which the *Freedom of Information Act 1982* and related laws continue to provide an effective framework for access to information in Australia.

1. In performing its functions in relation to this reference, the Commission will consider: (a) relevant existing and proposed Commonwealth, State and Territory laws and practices; (b) any need to harmonise those laws and practices; (c) administrative acts or practices within agencies and their impact on access to Government information; (d) other recent reviews of the Freedom of Information Act 1982; (e) information access regimes in other comparable jurisdictions; (f)

any relevant constitutional issues, particularly those that may affect harmonisation of information access laws; (g) the impact of an evolving technological environment on production, storage and access to information; (h) the desirability of minimising the regulatory burden on government agencies; (i) the legitimate interests of governments and their ability to obtain forthright advice from agencies and also of third parties who deal with government; and (j) any other related matter.

2. The Commission will identify and consult with relevant stakeholders, relevant State and Territory bodies and ensure widespread public consultation.

3. The Commission is to report no later than 31 December 2008.

Dated 24 September 2007

Philip Ruddock, Attorney General

Peter Bennett is president of Whistleblowers Australia.

Whistleblowing in the Public Sector: comments

Peter Bowden

Dr AJ Brown of Griffith University is the leader of a large research project on whistleblowing, funded by the Australian Research Council and several ombudsmen's offices and other watchdog bodies. The project's first report, titled Whistleblowing in the Public Sector*, was released in October 2007. It is a compilation and analysis of several large surveys of public sectors employees. It is labelled draft and seeks comments. The following paragraphs are the comments sent to Griffith University by Dr. Peter Bowden, Education Officer on the National Committee, and President of the NSW Branch of Whistleblowers Australia. They have been modified slightly to make them more intelligible to readers of* The Whistle *who have not read the Griffith report*

I comment here on a number of issues. But first, my sincere congratulations to Dr AJ Brown and his colleagues. The scope and volume of work set out in the report are massive, and the analyses that have been undertaken are extremely detailed. It is an outstanding piece of research that will form a baseline for further research and administrative action for many years to come.

The percentage of whistleblowers that experience no retaliation

The report states that only 22% of public interest whistleblowers responding to the largest survey (the Employee Survey) are treated badly by management and co-workers. This figure came as a surprise to this writer and to most members of WBA. Whistleblowers who approach WBA will likely be facing greater difficulties than the sample in the Griffith report, and have gone to WBA for those reasons. They will colour WBA perceptions as a result. Nevertheless, this research finding appears at odds with other data from the same research; and from the findings of other researchers. When coupled with press releases that "bust whistleblower bad treatment myth" (October 24, 2007), or the opening paragraphs in the report that state the "bleak picture is substantially inaccurate", the research takes much of the urgency out of the need for legislative reform. It is very desirable, therefore that the figure be accurate, and clearly be seen to be so.

The report does not fully achieve this objective, for several reasons:

1) It is not entirely clear that the 22% who are mistreated are public interest whistleblowers. Point 14 on page vi describes this 22% category only as "whistleblowers" (although Figure 5.1 describes them as public interest whistleblowers). If they are public interest whistleblowers only it should be clear. Nevertheless, even if point 14 is clarified and the 22% are public interest whistleblowers, the term raises the question of what is "public interest" whistleblowing. It appears to be a category of whistleblowing that excludes personal and workplace grievances, a category which in turn raises the question of whether this so-called classification of whistleblowing is likely to be ill treated. As discussed below, further doubt arises on the question of the direction of whistleblowing, when taken in context with the type of whistleblowing.
2) Case handlers and managers have responded that 48% of employees who report wrongdoing "often or always" experience problems (emotional, social, physical, or financial) and a further 42% state that it is "sometimes" the case (p.83).

   These problems are not necessarily retribution, but it is difficult to see how these types of problems could arise, if the whistleblower is treated "well or the same" by co-workers or management. These results come from a survey question, 31, which is preceded by the statement that it concerns "possible negative impacts and risks of reprisal in your organisation for employees who report wrongdoing". This explanation would suggest that the respondent would answer in the context of reprisals.

   A further point is that case handlers and managers involved in a whistleblowing incident would likely see the true picture behind whistleblowing for it is their task to manage such incidents. They would have no reason to exaggerate their responses. If then 48% to 90% of whistleblowers experience problems, as observed by people with some formal responsibility, then the question arises as to why do the majority in the Employee Survey report whistleblowing without retribution or, apparently, without problems.
3) Table 2.6 states that for 37% of reporters the wrongdoer was "below my level" and a total of 67% "at" or "below my level". The percentages are higher for managers who reported wrongdoing by people at or below their level (up to 78%). These figures raise questions about the low level of retribution reported in the Employee Survey, for it is difficult to see how an employee at a lower level can exact retribution on a person who whistleblows against him/her when that whistleblower is at the same or a higher level. The 22% who are treated badly appears to include

people who report a lower level employee (Figure 5.1). Table 8.20 from the Employees Survey shows 85% at the "at or below" level were treated well, 66% where the wrongdoer is above the whistleblower's level. Again it is not immediately clear whether this reporting was public interest whistleblowing or whether it included personal grievances.

Whistleblowing against a person at a lower level does raise the question of whether the definition of whistleblowing needs changing. A sound argument could be advanced that it is the responsibility of every manager in any organisation to put a stop to wrongdoing when he/she hears of or observes it anywhere in the organisation.

It is entirely feasible that managers or more senior staff, apart from those with direct responsibility, classified the survey questions on wrongdoing as whistleblowing (according to the definition used by the Griffith study), when they were simply fulfilling their broader management responsibilities. The responses on attitudes show that managers have a higher sense of Organisational Citizenship Behaviour than normal employees. The report itself says, p109, that senior managers often view the reporting of wrongdoing as fundamental to the integrity of the organisation. Several other places in the report evidence that managers have a more positive view of the organisation than non-managers: Table 6.1, pp101, 105 (s.6.6).

Senior officers can encounter wrongdoing at levels equal to or below them, even when outside their own responsibility, through the many cross organisational meetings, social engagements or friendships that exist in modern organisations. When taken in combination with the question of what is public interest whistleblowing below, it becomes apparent that the 78% treated well may include numbers of people who are risking nothing to report the wrongdoing, and against whom it would be impossible to take retributive action.

These conclusions are in part borne out by Table 8.3 which shows that whistleblowers when reporting wrongdoing below them have a negligible fear of reprisal. When reporting wrongdoing above them the fear is well over half. It would be reasonable to give some credence to this percentage as reflecting some knowledge of how their organisation would react.

It would be helpful if the report could clarify these issues.

The "at or below" issue raises, along with other concerns, questions on the reliability of the Employees Survey's recording of low incidences of retribution. It does not however, fully explain the 66% of people whistleblowing against people above them who are treated well (Table 8.20). These issues are still subject to questioning the type of whistleblowing (below).

The actual locus of responsibility

The question of whether the wrongdoer is above or below the whistleblower may impinge on the risk of reprisal, but the real impingement is whether the manager responsible for that function believes him/herself accused by the whistleblowing. Alternatively, whether that manager feels sufficiently responsible for the public image of the organisation to cover up any wrongdoing. A manager senior to the whistleblower who has failed to identify or uncover a wrongdoing against the public interest, or who will bear the opprobrium of its exposure, even though the wrongdoing is committed by a junior officer, will likely wish to cover it up, even though that manager was not responsible for the wrongdoing. Many examples from other fields of endeavour — in the churches for instance — illustrate a strong desire to cover up by senior personnel, even though they have not been responsible for the wrongdoing. A related issue arises when a Board of Directors rolls a fellow Director who wants to expose wrongdoing by the Chief Executive.

The questionnaires may be able to associate the type of wrongdoing with the level of officer reported for wrongdoing, and the level of officer to whom the offence was reported (and therefore assumed to be exerting the reprisals). Question 28 in the Employee Survey, for instance, assumes the report is to a senior officer or to a case handling specialist. It would be interesting to determine if reprisals correlate with the type of wrongdoing for both upwards and downwards whistleblowing.

The public interest in public interest whistleblowing

It is not always clear in the report when the whistleblowing includes personal or workplace grievances (as in Table 2.6 mentioned above). This distinction needs to be made at all stages where the question of reprisals comes up.

The definition I use on the public interest component of whistleblowing is

> *An action that brings harm, or has the potential to bring harm, directly or indirectly to the public at large, now or in the future, is not in the public interest*

Harm itself is difficult to define but could impinge on the health, welfare, financial well-being or even on the reasonable expectations of all people or a specific group of people.

If that definition is accepted, it could redefine some of the classifications of wrongdoing or of whistleblowing itself. In short, whistleblowing that brings no harm to the public at large is not whistleblowing. The Griffith report, however, has many categories beyond this definition.

The nature of the wrongdoing

A high percentage of people who consider themselves whistleblowers are unable to identify the harm that has been inflicted on the public. Whistleblowers Australia in NSW have been meeting with whistleblowers seeking assistance every week for several years. WBA does not keep statistics but would estimate that 50-60% of the people who consider themselves whistleblowers, come along because of the problems they are having at work, usually with one or a few senior officers. They rarely have a public interest wrongdoing to expose. If asked what the wrongdoing was, they usually cite bullying of some type or form. Their purpose in coming to WBA is to talk through the problems they are experiencing.

This finding is consistent with the Griffith study which in Table 3.5 shows a massive 24% reporting bullying as the wrongdoing. Based on the WBA meetings with whistleblowers I would argue, however, that bullying should not generally be classified as a public interest matter.

If the bullying is widespread, affecting a number of people in the work environment, then it is of public interest. But such claims are difficult to prove, and in any case rarely made. The only recent claim is Royal North Shore Hospital in NSW where widespread bullying has been publicly stated as the cause behind the problems at that hospital.

Several other categories of wrongdoing in Table 3.5, when viewed from the position that it may be a personal clash with the supervisor that is behind the claim to be a whistleblower rather than public interest, reinforce the questioning of public interest. These include favouritism, failure to follow staff procedures, covering up poor performance, inadequate record keeping, and incompetent decision-making. All are classified by the project's report as public interest issues, whereas in practice many are the result of personal or workplace grievances. The report classifies only dangerous or harmful working conditions, unfair dismissal and bullying as personal grievances, although there are many more personal issues that arise.

Does the low retaliation rate fully reflect actuality?

In summary then, the question arises on why the percentage of retaliatory harm experienced by whistleblowers is lower in the Employee Survey (ES) than it is in the other surveys – the Internal Witness Survey (IWS) or the Casehandlers and Managers Survey, significantly so in the latter, and in WBA experience. And which figures are more likely to be correct?

Part of the answer is straightforward. The IWS will have a higher figure for the same reasons that WBA findings show high levels of retaliation — people with post whistleblowing problems are more likely to select themselves for approaching WBA, and for responding to a survey, where they can state their grievances openly. The percentage that experience retaliation will be higher for those who approached either WBA or responded to the IWS (although the only IWS results in answer to Qs 50 & 51 are in Table 5.1, which was not fully clear to this reader. The text states however that only a quarter were treated badly, which is lower than WBA findings).

But this explanation does not answer the higher rates for case handlers, for they are people trained in and with the responsibility to resolve whistleblowing issues. They would, it is assumed, be more dispassionate in noting the occurrence of retaliation. If however, the Case Handlers figure of 90% experience problems "sometimes, often or always" is valid, then the question of why is the ES figure so low has to be answered.

Four responses are possible, all speculative. (i) A number of respondents claiming to be whistleblowers are experiencing interpersonal conflict. They are not threatening the organisation, however, and are therefore less likely to face attempts to silence them. In other words, if some "wrongdoing", such as bullying or the many other complaints that do arise, are not against the public interest, then people reporting these wrongs are unlikely to experience retaliation to the same extent. (ii) As noted, the percentage of whistleblowers whistling on lower level employees is high in the ES, but where the possibility of retaliation is low. Not only does this issue impinge on the nature and definition of whistleblowing but it also offers a possible reason for the discrepancies in the survey results. (iii) Some whistleblowers have changed jobs, and are therefore unlikely to experience retribution. The impact of leaving the service will be small, however, as resignation rates are low. The impact of changing departments can be checked from some of the survey answers. (iv) The document does not show the percentages of respondents from different agency groups. As the Commonwealth has virtually no whistleblower protection, it is possible that the nature of whistleblowing and therefore of retaliation is different in the Commonwealth. This possibility should be explored further.

Page 133 and Table 8.3 show that fear of reprisal was the overwhelming reason why non-reporters did not expose wrongdoing. It is difficult to believe that these fears were not grounded on actual practice in the organisations for which the non-reporters worked.

Finally the report itself quotes two respected US researchers, Miceli and Near, to the effect that the exposure may be "potentially controversial and damaging" and "result in negative outcomes for all" (p4). There are many similar research findings.

Impact on conclusions in the report

It is suggested therefore that if the low levels of retaliation found in the Employee Survey can be contradicted by findings in other surveys, and by other outside researchers, then the report would best be circumspect about its conclusions on this issue. Statements such as "possible to blow the whistle without suffering reprisals" and "in the vast bulk of organisations, speaking up … is … a natural part, if not duty, of a public servant", or the "bleak picture is substantially inaccurate" should be employed with caution, if at all. Placing the minimal retaliation conclusion in a premier position in press releases should also be undertaken cautiously

The danger of minimising the retaliation risk, particularly as it is not unambiguously correct, is that it removes the pressure on politicians to strengthen whistleblower legislation. The danger for the Griffith report is that the conclusions are not fully supported and may be disputed in other academic and professional fora.

The agencies that participated

The desirability of identifying the type of agency that participated in the study has been mentioned earlier in these comments. It is also one way to differentiate between likely levels of retaliation.

Among the wrongdoings listed for instance, there is no plagiarism, false reporting of research results, dishonest grant applications, or mistreatment or harm to patients, which would indicate universities, research institutions and hospitals are not included in the surveys. All of these institutions have featured strongly in whistleblower news and organisational cover-ups in

recent years, perhaps proportionally more than the central public service.

In a research document that will be quoted by many other researchers in coming months and years, it is desirable that as much data as possible be supplied, even if the need is not currently obvious.

The private sector

The research is on public sector whistleblowing. It is difficult to distinguish at times, however, between the magnitude of the damage to the public good that can be caused by private sector wrongdoing, against that by the public sector. The HIH debacle, for example, was as damaging to the public interest as any public sector wrongdoing in recent years. The APRA failure to heed the private sector whistleblower on FAI and HIH was in fact a public sector whistleblowing management failure.

In addition, the public sector runs businesses — transport systems, power generation plants, and other instrumentalities — that could easily be private sector. These bodies would be exposed to the same types of wrongdoing as are private companies – advertising, marketing, pricing, purchasing, and distribution issues. Many of the financial management concerns that arise in the private sector or in the public enterprises are also found in the central departments and agencies of government. The report draws conclusions that impact on the management of whistleblowing cases, including the legislation for the public sector. It would be worthwhile, therefore if the report reached a broader series of conclusions by devoting some effort to examining how private sector whistleblowing might be managed.

Who can whistleblow and who is a whistleblower? The definition

The definition of whistleblowing on p3 uses the Miceli and Near definition which confines the practice to former and current organisation members. Organisation members are later defined as employees, volunteer workers or contractors. The definition also appears to include people who are complaining about interpersonal and workplace problems.

It would be worthwhile considering extending the definition to users (or clients or customers). Whistleblowers Australia is aware of a number of cases where a user of a public service has suffered discrimination for speaking out against a public supplier. It can be argued that the Administrative Appeals Tribunal, or its state equivalents, exist to correct such problems, but these institutions have a number of weaknesses that render them less than effective. Some state tribunals do not, in fact, cover all public bodies, including some that ration a public resource.

The three-fold objective of whistleblowing legislation is to protect the whistleblower, encourage whistleblowing and stop the wrongdoing. The inclusion of a client that could identify wrongdoing would help fulfil these objectives

More significant however is the need to include the public interest in the identification of whistleblowing. The current definition has included people making personal complaints, which have muddied the waters on how they are treated, and the types of legislation needed to protect them. Both the Griffith study and WBA would prefer the term Public Interest Disclosure to describe the legislation. Such a step will then help ensure that any complainant first decides on public interest grounds whether he or she is a whistleblower and asks for protection under the legislation. Otherwise we will have many people with a complaint about their boss or the organisation claiming that they are a whistleblower (as would appear to have happened in the Employee Survey)

The suggested definition is

Whistleblowing is the revealing of information by any person associated with an organisation, of illegal, immoral or illegitimate practices by that organisation that are against the public interest and that otherwise would not become public knowledge,

Further research

The report has identified a number of issues which are not clear, and has also flagged the need for further research. These comments strongly support that need.

From the viewpoint of the issues raised in these comments, it is suggested that the project, possibly through surveys but preferably through interviewing, undertake to clarify the uncertainties that have been noted. e.g. What are personal grievances and how to identify them? Do whistleblowers reporting against a person at a lower level experience the same amount of retribution? Are the IWS respondents materially different from the Employee Survey respondents in any ways that would explain differences in the levels of retribution?

The suggestion on more interviewing is raised because it is the only reliable way of determining whether the issue is a public interest concern rather than a personal or workplace complaint. It will add flesh onto some of the bones of the numbers that have come up through the surveys.

In conclusion

These comments are intended to provide support and suggestions where a possible strengthening could be considered, They do not decry in any way an impressive research undertaking, for which, as mentioned at the outset, the authors should be congratulated. The report will provide data for further research, and much administrative action, for many years to come. It is expected, however, that the impact on private and public sector honesty will be much more immediate.

Nevertheless, the research as reported does show discrepancies between its surveys, and in particular, the responses of case handlers and managers show a considerably higher incidence of problems facing whistleblowers who report wrongdoing (up to 90%) than do other surveys. This may be due to the project's limited definition of whistleblowing, which includes personal complaints, and is not confined solely to public interest disclosures. There may, however, be other causes behind the discrepancies. Whistleblowers Australia should dispute the current findings until clarified by further research.

Dr. Peter Bowden is lecturer in ethics at the University of Sydney and a member of the Executive Committee of the Australian Association of Professional and Applied Ethics.

Whistleblowers Australia business

The 2007 annual conference

A report by Peter Bowden

Held on 24 November in Sydney, there is little doubt that the 2007 conference started breaking new ground on a number of issues facing Whistleblowers Australia. Arguably the most significant was the inclusion of freedom of information concerns. WBA president Peter Bennett spoke about the problems that journalists face when they refuse to reveal their sources, and in particular of Allan Kessing who revealed the flaws in Australian airport security to two journalists from *The Australian*: Martin Chulov and Jonathan Porter. Every Australian flies more safely thanks to Kessing's risking imprisonment to expose weak airport security.

A session led by Peter Timmins on the media's right to know campaign identified many ways in which Australian politicians and public servants block the basic building blocks of a modern democracy — freedom of information.

The conference tackled three other important issues: WBA's suggestions on the ways in which a whistleblower can maximise his or her safety when they blow the whistle, the desirable content of whistleblower legislation and finally the need for private sector whistleblower protection. All were accepted, along with FOI, as representing additional directions in which WBA will need to move.

Perhaps the most controversial session was devoted to the Griffith University whistleblower research project. There was a strong minority who believed that the finding that a much smaller percentage of whistleblowers suffered reprisals than generally believed was (a) wrong and (b) damaging to efforts to strengthen whistleblower protection. The conference concluded that the problems with the Griffith research possibly lay in the inclusion of people who had personal complaints in its definition of a whistleblower, i.e. the Griffith study was not confined solely to public interest whistleblowing. Also mentioned were that the study's report was draft, inviting comments, and that it needed to undertake further research before definite conclusions were made the subject of media releases.

Draft Minutes of the 2007 Whistleblowers Australia Annual General Meeting

Parramatta, Sydney NSW
25 November 2007

1. Meeting opened 9.15am.
Chaired by P Bennett, President.
Minutes taken by C Kardell, Secretary.

2. Opening statement: Peter Bennett welcomed everyone to the AGM. He opened by noting we had a change of government yesterday, urging everyone to see the election win by Federal Labor as another opportunity to keep pushing for federal whistleblowing legislation. He suggested it fitted in well with Labor's promise to amend the FOI legislation and generally to improve the transparency and accountability of government.

3. The attendees were B. Martin, P. Sandilands, C. Kardell, P. Bowden, J. Challita, S. Higgins, J. Holland, M. Marshall, G. Turner, K. Smith, K. Sawyer, S. Sinclair, B. Steele, P. Bennett, B Holden, J. Pezy, S. Pezy, J. Lennane, G. McMahon, C. Devine, B. Pasamonte, S. Hickey, J du Varrens, F. Feliks, S. Carroll, J. Tang, R. Sullivan and J. Regan plus two visitors and two names withheld.

4. Apologies were received from M. Bersinic, G. Blamey, L. Blaney, Z. Cassar, A. Clifton, R. Cumming, L. Fogg, S. Jarosek, G. McEvoy, K. Perston, M. Vogt, S. van de Wiel, L. O'Keefe, M. Lander, D. Fry and K. Potter.

5. Previous Minutes AGM 2006.

Peter Bennett referred the meeting to the previous provisional minutes published in the January 2007 edition of *The Whistle*, a copy of which had been made available to all present immediately prior to the meeting. Peter called for the previous minutes as published to be accepted as a true and accurate record.

Proposed: B Pasamonte. Seconded: P Bowden. Carried.

5 (1). Business arising.

Item 10(iv): 'Whistle while they work' research project.

Greg Mc Mahon asked whether WBA had written to AJ Brown, to advise that the involvement of individual members of WBA with the project should not be taken as an endorsement of the project or its outcomes by WBA. Peter Bennett said it had not been done formally, but that Peter Bowden, Mary Lander and he had made that point very clear in all of their dealings with the project.

6. Election of Office Bearers
Peter Bennett stood aside for Brian Martin to proceed as the returning officer.

(a) Position of National President
Peter Bennett, being the only nominee, was declared elected.

(b) National Executive positions.
The following, being the only nominees, were declared elected:

Vice President: Jean Lennane (NSW)
Junior Vice President (and International Director): Brian Martin (NSW)
Secretary: Cynthia Kardell (NSW)
Treasurer: Feliks Perera (Q)
National Director: Greg McMahon (Q)

(c) National Committee Members (6 positions)
The following, being the only nominees, were declared elected.

Geoff Turner, Communications Director (NSW)
Stan van de Wiel, Committee member (Vic)
Shelley Pezy, Committee member (SA)

Mervyn Vogt, Committee member (Vic)
Charmaine Kennedy, Committee member (WA)
Toni Hoffman, Committee member (Q)

Peter welcomed new members Charmaine and Toni and urged the committee to work for the group's advancement throughout 2008. He noted that under the Constitution branch presidents — currently John Pezy (SA) and Peter Bowden (NSW) — were automatically members of the national committee. Greg commented amid general laughter there was just enough of a gender balance to keep the men in check.

7. Position of Public Officer

Peter informed the meeting that Vince Neary was prepared to continue in the position of Public Officer, if required. He thanked Vince on behalf of the group for his willingness to continue in the position and asked the meeting to nominate two members to sign an authority, prepared by V Neary, to lodge the required documents and annual fee with the NSW Department of Fair Trading.

Motion by B Martin to nominate J Lennane and C Kardell so to do.
Seconded: F Perera. Carried. Feliks provided a cheque to cover the required fee.

8. Treasurer's Report

The treasurer, Feliks Perera, tabled a financial statement ending 30 June 2007 and briefly stated the details as follows:

Income
Subscriptions, $3,330.00
Donations, $600.00
Total, $3,930.00

Expenditure
Whistle production costs, $2,487.58
Return to branches, $500.00
Brisbane AGM Subsidy, $1,148.30
Book account, $236.20
Annual return fees, $43.00
Bank charges, $8.10
Total, $4,423.18

Excess of expenditure over income for year, ($493.18)

Balance Sheet at 30 June 2007

Accumulated fund at 1 July 2007, $8,949.58
Less net expenditure for 2007, $493.18
Total, $8456.40

Assets
Deposit paid November 2007 AGM/Conference, $600.00
Balance at bank, $7,856.40
Total, $8,456.40

Feliks reported the deficit last year was due to the subsidy for the Brisbane AGM and only 70 renewal subscriptions being received by the end of June. The subscriptions had picked up since then, but members were urged to do what they could to increase and maintain the membership.

Peter and Brian took the opportunity to thank Feliks for a smooth and reliable job well done.

Peter called for the treasurer's report to be accepted as a true and accurate statement of accounts.

Moved: J Lennane. Seconded: B Pasamonte. Carried.

9. REPORTS

9 (1) The President's Report.

Peter reported that other than the things we all knew about, like the correspondence that had gone out for WBA and his attendance at the Griffith University project seminars, personal issues had got in the way of him doing much more. But he said all that was behind him and "today is day one of having a go."

Peter revealed he had some real problems with the draft report of the "Whistle while they work" project, which he said he'd leave until later, under other business. In his opinion the system didn't work well for whistleblowers and counting whistleblowers in with those who had a personal grievance didn't help anyone, least of all the whistleblowers.

9 (2) The Secretary's Report.

Cynthia said she, unlike Peter, had to do a certain amount and so could feel really virtuous at the year's end, even if it what she had done wasn't anything other than the ordinary stuff. Like the two Peters, Jean, Kim, Brian, Feliks, Greg and Geoff, she had responded to many requests for information and support. Plus she maintained the membership register and got *The Whistle* out to everyone. The last was made possible by her 85-year-old father Jim, who had charge of the envelope stuffing, stamping and posting, all ably assisted by his dog Danny. The meeting thought it should extend its thanks to Jim (and Danny).

9 (3) Report from South Australia.

John Pezy described the SA branch operation as a network of support: he said most of the requests for information and assistance, with few exceptions, came from aggrieved members of the public or employees.

Of the exceptions, he cited a dentist who had reported a radiation incident and a medical physicist who had been bullied after reporting a failure to deal with the consequences of calibrating a treatment machine incorrectly. He continued to work through the issues with both of them.

John reported on difficulties arising from the branch's involvement with the Angela Morgan case.

9 (4) Report from Queensland

Greg McMahon reported the long-standing Heiner affair had got a boost from the articles published in the NSW press by Piers Akerman and Chris Pearson, largely because Kevin Rudd was Chief of Staff in the Goss government at the time when Cabinet decided to shred the documents from the Heiner Inquiry into a pack rape at a hostel. But also because Kevin Lindeberg, who blew the whistle on Cabinet's decision, recently convinced six eminent jurists to sign a petition condemning the Cabinet decision and calling for an inquiry, and new legislation to stop it ever happening again.

The Whistleblowers Action Group gave Col Dillon, former police officer, well known whistleblower and Queensland public servant, the Whistleblower of the Year Award. Col became involved in the more recent Palm Island "death in custody" affair

and resigned because of it. He is now at the University of Queensland and working on the Heiner matter, which had its origins in the pack rape of a young Aboriginal girl at a youth hostel. Gordon Harris, former police officer, whistleblower, WAG Chair and now family law lawyer is representing the Aboriginal girl and it looks like the investigation will go ahead.

9 (5) Report from Victoria.

Kim Sawyer reported Keith Potter continues to lobby government and others about Albert Lombardo and Bill Toomer. Bill has swapped bricks and mortar for a houseboat and is somewhere on the Murray. No one has seen Mick Skrijel in over a year. Kim is concerned about his health and suggested the National Executive consider writing a letter recognising his contribution to whistleblowing over almost 20 years.

In recent times Ray Hoser has only been seen in the press. Ray identified police corruption, leading to nearly 800 police being forced out of the force in the period 1995-1997. The Victorian branch continues to get calls from whistleblowers in the police.

Whistleblowing issues have figured prominently in the Victorian press throughout the year. One example is the incident where a lawyer was shot when he went to the aid of a woman, who was stabbed, which raises some really tricky issues about whether and when a bystander should get involved.

Brenda Pasamonte reported Mervyn continued to convene about ten (monthly) meetings each year at Frankston, as advertised on the back of *The Whistle*. She said attendances tend to fluctuate, but can on occasion go as high as twenty. Mervyn has continued to support army whistleblower Nathan Moore.

9 (6) Report from New South Wales.

Peter Bowden reported the branch hadn't been involved in any major outside activity, since he appeared before the Parliamentary Committee on the ICAC (Independent Commission Against Corruption) for the NSW branch in 2006. Both he and Cynthia made written submissions. Peter checked only recently and the draft report of the review was still sitting on Premier Morris Iemma's desk. A year later! The parliamentary secretary told him the review has picked up on just about all of our recommendations.

Peter's day job is lecturer and researcher in ethics at the University of Sydney. He gives one lecture per week on the ethics of whistleblowing, and he is working on the other teachers, hoping to increase the classes across other faculties and universities on the ethics of whistleblowing. Peter has continued to be involved with the Griffith University 'Whistle while they work' project.

Cynthia continues to convene the weekly caring and sharing meetings on Tuesday nights at Balmain. Peter, Brian, Jean and Cynthia continue to answer the phones. Geoff fields enquiries sent by email to the address wba@whistleblowers.org.au, forwarding them on to the others, as required.

Cynthia and Jean reported they no longer represent WBA on the Internal Witness Advisory Committee (IWAC) meetings held by the NSW Police. It hadn't met for one reason or another for over a year, when the NSW Police decided recently to discontinue it. IWAC oversighted the cultural and other reforms initiated by the Wood Royal Commission in the mid 1990s.

The NSW Police say IWAC is no longer required now that the IWSU (the whistleblower protection unit) comes under a new command. It doesn't follow, of course and no one seems to be able to explain it: certainly not Commissioner Scipione, who we wrote to at the time. We formally refused to attend a morning tea to paper over the cracks with a bout of nostalgic reflection and congratulation. We were dismayed to receive an engraved memento thanking us for being on the IWAC since its inception in 1996. It is not a reason for celebration. We are concerned it is a case of full steam ahead for the NSW Police: on course for another royal commission.

9 (7) Communications Report

Geoff Turner reported that email requests for help remained steady, much like last year. He usually provides only general information before booting them across to the committee. He asked the committee to keep him in the loop, so he can know whether or not the inquiry has been dealt with.

Some minor changes had been made to the website and it was now being used to advertise things like the annual conference and AGM. The site is hosted by a voluntary organization known as suburbia.org.au, which keeps our costs down, although the NSW branch does make an annual donation. He assisted Cynthia with setting up the member's email list, which we intend to use to develop our capacity to network and keep in touch with the membership.

9 (8) *The Whistle*

Brian Martin described how he essentially just drops the articles or the best of the available media stories, many of which are supplied by Mary Lander and by associate editor Don Eldridge, into the set format document, produces a draft, sends it to Patricia and Cynthia, who proofread it, then emails the final draft to the print room at the NSW Law Society. Then Cynthia collects them and gets them out to the members, with the help of Jim. Feliks draws a cheque for his and Brian's signature and sends it off.

Brian said it was a well organised production and that email discussions between committee members about whistleblowing had proved to be a reasonably good source of material for *The Whistle*. But he said it was no replacement for an article from one of the members. He urged all of us to put pen to paper more often.

10. Other Business.

10 (1) whistleblowers.org.au website

Julé du Varren suggested how the website could be used to post information and media releases, service the email traffic better and improve communications generally. Julé had some expertise in this area and was willing to assist.

Peter Bennett intended to produce some copy on client professional privilege and the need for federal whistleblowing legislation so it could be posted on the site.

10 (2) Private/public sector whistleblowing

Kim Sawyer was putting together an article about the US False Claims Act. Kim wants to educate WBA and the wider public about why a false claims act, together with a whistleblower protection act, is in his view the only real option for advancing public and private sector whistleblowing under the same legislative umbrella. He explained how it would reap huge financial and other rewards for government, society and whistleblower alike.

10 (3) Privacy legislation

Sabina Sinclair is concerned at the way the privacy legislation is being used by government agencies to wrongly deny access to information that would otherwise be available under the freedom of information act in the public interest.

10 (4) AGM 2008

Cynthia informed the meeting it was Victoria's turn to host the AGM in 2008. She described how planning for the AGM needed to fit in with each issue of *The Whistle,* the first being the January, then the April and July editions. Kim Sawyer undertook to take the issue up with Lori, Mervyn and Stan and confirm preliminary details in January for publication in the April issue.

10 (5) Email distribution lists

The meeting determined to leave the current email discussion list as is for general matters, as it includes members and other interested persons, but to create and maintain a committee distribution list for insider specific emails.

10 (6) Publication of the names of AGM attendees

With two exceptions, which the meeting will respect, the attendees consented to the publication of their names in the draft minutes of the meeting in *The Whistle.*

10 (7). Draft report on the 'Whistle While They Work' research project.

Greg still has reservations about our relationship with the Griffith University research project, and he is concerned about the likely impact of the current draft of the report, which was the subject of a presentation by Chris Wheeler, the NSW Deputy Ombudsman. (Note neither the presentation not the draft report include the actual data set out as a part of the report). He moved a motion, seconded by Karl, to express a 'no confidence' vote in 'the methodology of the study, the interpretation of the data and the conclusions being offered'. He was concerned that the draft ignores past research, like that done by Bill de Maria, dilutes the harm to whistleblowers by categorizing their disclosures as the same as grievance complaints and it appeared to be biased toward showing the existing legislation was working well.

Joanna disagreed with the motion, seeing the draft report as something that needed amendment rather than anything else. Jean Lennane explained how she thought there was merit in both of those positions. Cynthia thought it severe but that it needed to be said, that the use of the Miceli and Near definition of whistleblowing, which omits any requirement for the disclosure to be in the public interest, allowed for a much greater number of respondents, and it meant that the study was a study of the complaints handling systems presently operating in the relevant jurisdictions, rather than a study about whistleblowing. That further sampling and work was required to allow the study to distinguish between the treatment meted out to whistleblowers and those who had simply exercised their right to complain about the wrongdoing directed at them. Karl stood by his initial assessment: he conceded he hadn't seen the data. Kim agreed with Greg's concerns: he had no doubt the current draft if retained would be used against whistleblowers. Brian suggested a better way of addressing the obvious disquiet felt by most of the members was to check the data (on their website) and put together our own assessment of the data and the draft of the report; get it right and post it on our website.

In the event the motion was lost, 7 for and 15 against, with the meeting deciding to adopt the suggestion put up by Brian. Cynthia is to produce a draft statement about the use of the Miceli and Near definition of whistleblowing.

11. Close of business

There, being no other business, Peter closed the meeting after thanking everyone for their valuable time and enthusiastic participation.

Meeting closed at 1.15pm. See you all again in Melbourne next year.

Whistleblowers Australia contacts

Postal address: PO Box U129, Wollongong NSW 2500

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 7.00pm, Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.
Contact: Cynthia Kardell, phone 02 9484 6895, fax 02 - 9481 4431, ckardell@iprimus.com.au
Website: http://www.whistleblowers.org.au/
Goulburn region: Rob Cumming, phone 0428 483 155.
Wollongong: Brian Martin, phone 02 4221 3763.
Website: http://www.uow.edu.au/arts/sts/bmartin/dissent/

Queensland: Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232 (a/h) [also Whistleblowers Action Group contact]

South Australia: John Pezy, phone 08 8337 8912

Tasmania: Whistleblowers Tasmania contact: Isla MacGregor, 03 6239 1054

Victoria
Meetings are normally held the first Sunday of each month at 2.00pm, 10 Gardenia Street, Frankston North.
Contacts: Stan van de Wiel, phone 0414 354 448; Mervyn Vogt, phone 03 9786 5308, fax 03 9776 8754.

Whistle
Editor: Brian Martin, bmartin@uow.edu.au, phones 02 4221 3763, 02 4228 7860. Address: PO Box U129, Wollongong NSW 2500. Associate editor: Don Eldridge. Thanks to Cynthia Kardell and Patricia Young for proofreading.

Political commentary?

In the October 2007 issue of *The Whistle,* one of the items reproduced in "Media watch" was an article titled "Tragic story cries out for an ending" by Piers Akerman, from the 26 August issue of Sydney's *Sunday Telegraph.* The article attacked Kevin Rudd over his possible role in the Queensland cabinet decision to shred the Heiner documents. (Those not familiar with this notorious case can find numerous documents by putting "shredding of the Heiner documents" into a search engine.)

In the lead-up to the federal election, Akerman wrote repeatedly about Heiner and Rudd's possible role; since the Labor victory he has continued to write about them. Many Sydney readers are familiar with Akerman as a vociferous right-wing commentator and would have been able to assess the article reproduced in *The Whistle* in that context. But readers from other states might not have known about Akerman's anti-left and anti-Labor track record.

Though reproducing Akerman's article would not have had the slightest influence on the outcome of the election, the question nevertheless arises as to whether *The Whistle* should be running politically partisan material during an election campaign.

Members of Whistleblowers Australia represent diverse political positions. More generally, supporters of dissent range from the far right to the far left, including some who oppose all political parties. Therefore, it is to be expected that some *Whistle* articles will take partisan positions.

Should articles such as Akerman's be included just like other articles? Should they be accompanied by commentary or disclaimers? Should they be balanced by contrary articles? Or should they not be run at all? Comments welcome.

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 07 5448 8218, feliksperera@yahoo.com