"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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Newsletter of Whistleblowers Australia

On the False Claims Act, see pages 6 and 14.

Media watch

Why we need whistleblowers

New Statesman, 4 December 2008

This has been the week of the whistleblowers. Nevres Kemal is the social worker in the north London borough of Haringey who raised the alarm about failings in the council's child protection system in early 2007, several months before the death of Baby P. For her bravery and compassion she was dismissed from her job and served with an injunction preventing her from speaking publicly of her concerns.

Christopher Galley is the Home Office civil servant who leaked details of mismanagement within the department to the Conservative immigration spokesman and MP for Ashford, Damian Green. The information he passed on was of the lowest level of classification but included details of the employment of illegal immigrants, including 7,000 in sensitive security posts. Mr Galley was arrested in a dawn raid on 19 November and held for 17 hours. Mr Green was arrested eight days later.

Events tragically vindicated Ms Kemal. Individuals who failed to act on her concerns in 2007 are themselves disgraced, while the then health secretary, Patricia Hewitt, and her ministers, who were warned in writing about Ms Kemal's worries in February 2007, have questions to ask themselves.

Mr Galley is a partisan Tory: he has stood as a Conservative councillor and applied to work in Mr Green's office. He was arrested on suspicion of "misconduct in public office." There has so far been no mention of charges under the Official Secrets Act, suggesting that the police recognise the leaks were not especially serious.

What the cases of Ms Kemal and Mr Galley have in common is the disproportionate scale of the authorities' reaction to concerns raised by staff about their policies. All governments, local and central, need to be able to trust their employees to treat sensitive material with discretion. That may sometimes require enforcing. Without secrecy the government cannot function properly, as demonstrated by the hysterical reaction to the news that it had considered raising VAT to 18.5 per cent in 2011.

However, the manner of Mr Green's arrest and his extended detention (surely intended to intimidate), the search of his home and the raid on his parliamentary office are all, in different ways, shocking. No member of parliament is above the law. But there are sound reasons for the privileges of parliament, not least that they allow MPs to hold a government to account on behalf of constituents. MPs must be able to do this without fear of the arbitrary exercise of power of the executive.

We welcome, therefore, the appointment of Ian Johnston, the head of British Transport Police, to lead an inquiry into the police investigation of the leaks. We welcome, too, the warning from the Leader of the House, Harriet Harman, a former civil liberties lawyer, that the arrest of Green raises serious issues for parliament to consider. An explicit code defining the protection that MPs should enjoy is urgently needed.

Both may bring calm to the overblown statements of distress and foreboding of an imminent British police state expressed in sections of the press and allow us to focus on an urgent issue.

A culture of secrecy remains obstinately central to British politics. This culture assumes that it is dangerous to give the public official information. The Freedom of Information Act was a major step forward and has yielded good results. But it was designed to tip the balance in favour of disclosure and this it has signally failed to do. Outdated civil service attitudes persist. Officials complain they are overwhelmed by FoI requests. A sensible approach would be for government agencies to accede to requests as a matter of course. Objecting to disclosure should be the exception.

The New Statesman has supported whistleblowers and their right to disclose information they believe to be in the public interest. That is why we supported Derek Pasquill, who leaked information from the Foreign Office about the government's relationship with radical Islamists and ministers' knowledge of CIA "rendition flights." Charges against Mr Pasquill were dropped when it was revealed that senior FO officials shared his concerns.

His disclosures had been embarrassing to ministers but not damaging to national security. The same may prove true of the leaks to Mr Green. Or they may not. But the first question should have been asked long before the arrests: why are these documents secret?

Whistleblowers sent to mental ward, Chinese paper says

Andrew Jacobs
International Herald Tribune
8 December 2008

BEIJING: Local officials in Shandong Province have apparently found a cost-effective way to deal with gadflies, whistleblowers and all manner of muckraking citizens who dare to challenge the authorities: dispatch them to the local psychiatric hospital.

According to an investigative report published Monday by a state-owned newspaper, public security officials in Xintai city have been institutionalizing residents who persist in their personal campaigns to expose corruption or to protest the unfair seizure of their property. Some people said they were committed up to two years, and several of those interviewed said they had been forced to consume psychiatric medication.

The article, in *The Beijing News*, said most inmates had been released after they agreed to give up their causes.

Sun Fawu, 57, a farmer seeking compensation for land spoiled by a coal mining operation, said he was seized by the local authorities on his way to petition the central government in Beijing and brought to the Xintai Mental Health Center in October.

During a 20-day stay, he said he was tied to a bed, forced to take pills and given injections that made him numb and woozy. When he told the doctor he was a petitioner, not mentally ill, the doctor reportedly said, "I don't care if you're sick or not. As long as you are sent by the township government, I'll treat you as a mental patient."

In an interview with the paper, the hospital's director, Wu Yuzhu, acknowledged that some of the 18 patients brought there by the police in recent years were not deranged, but he had no choice but to take them in. "The hospital also had its misgivings," he said.

Although China is not known for the kind of systematic abuse of psychiatry that occurred in the Soviet Union, human rights advocates say forced institutionalizations are not uncommon in smaller cities. Robin Munro, the research director of China Labour Bulletin, a rights organization in Hong Kong, said such "an kang" wards — Chinese for peace and health — are a convenient and effective means of dealing with pesky dissidents.

In recent years practitioners of Falun Gong, the banned spiritual movement, have complained of coerced hospitalizations and one of China's best-known dissidents, Wang Wanxing, spent 13 years in a police-run psychiatric facility under conditions he later described as abusive.

In one recent, well-publicized case, Wang Jingmei, the mother of a man convicted of killing six policemen in Shanghai, was held incommunicado at a mental hospital for five months and only released last Sunday, the day before her son was executed.

The Beijing News story about the hospitalizations in Xintai was notable for the traction it gained in China's constrained state-run media. Such Communist Party stalwarts as *People's Daily* and the Xinhua news agency republished the story, and it was picked up by scores of Web sites. At the country's most popular portal, Sina.com, it ranked the fifth most-viewed news headline and readers posted more than 20,000 comments by evening. The indignation expressed was universal, with many clamoring for the dismissal of those involved. "They're no different than animals," read one post. "No, they're worse."

Reached by phone on Monday, a hospital employee said Wu, the hospital director who voiced his misgivings to *The Beijing News*, was unavailable. The employee, Hu Peng, said local government officials had taken him away for "a meeting" earlier in the day and had also looked through patient records.

Although Hu said the hospital was not authorized to diagnose patients, he nonetheless defended the hospitalizations, saying that all the patients delivered by the Public Security Bureau were certifiably ill. "We definitely would not accept those without mental problems," he said.

Fear in the Western fourth estate

Wikileaks editorial
24 November 2008

Wikileaks often receives messages from Western journalists expressing substantial levels of fear.

For instance, many Western news organizations, even when reporting a document, self-censor links to it (but not other links). Self-censoring organizations include Time/CNN, the *New Statesman*, and the *Guardian*. The "4.0" estate is no better: the Wikimedia Foundation, Digg and others have all pulled links after, or before, legal threats.

Journalists working in most of the developing world, who are occasionally arrested for hard-hitting stories, find this pusillanimous behavior incomprehensible.

States with highly disconnected power hierarchies, such as Russia during the mid 1990s, give us a clue as to the difference in perceptions between developing and Western journalists.

In transitional states, journalistic freedom and journalistic persecution appear to stem from the same root cause; the inability of power groups to defend themselves from journalists by using means more sophisticated than arrest or murder. Because the latter comes at some cost to the persecutor they are rarely employed. In other words all but a few "off limit" subjects can be reported freely and these limits are not yet well understood, which is why some journalists are murdered.

In the West, more sophisticated means are systemic and include economic and patronage incentives and a defensive restructuring of power group activities into complex financial webs which are resistant to press exposure.

While it is easy to count journalistic arrests and murders, great skepticism should be exercised in representing the lack of such assaults as a marker of a free or effective press. Precisely the opposite conclusion may be true.

An example letter from a Western journalist:

Hi,
While I do not see everything which you send me [to be] of value, I do see much of what I've been sent as extremely significant material. I regret to add that I have not opened much of what you have sent me, concern over potential "legal ramifications" being the reason. In short, I — like too many other journalists — have too often been effectively intimidated into silence.

In the past I've endured death threats, being shot at, having the steering unscrewed on my car, etc. … and yet, I find myself compelled to avoid documentation with a "controversial" legal standing, regardless of the legitimacy of those documents. While I still break quite significant news, I artificially limit myself to those sources which cannot engender "legal issues."

Am I a coward? I think not, but I am well aware of the tools employed to silence those with the courage to speak, and I cautiously avoid presenting "the bad guys" with a "weak point" in the defenses I've built. I am not certain how Wikileaks has avoided the devastation such "weak points" have brought, but I am glad you have.

Does the world need the ugly truths that lurk behind the sparklingly clean and gleaming white facades that so often surround them — yes! Without broad public awareness of the harsh realities we face, how can we, as a society, hope to address these issues? Of course, those whom the ongoing ignorance benefits wish to maintain it, and so the need for organizations such as yours.

What can be done to improve Wikileaks? I imagine that you're working on a great many things; but, perhaps paramount among these is the ongoing establishment of the "legiti-

macy" of Wikileaks as a source, a source which can one day be utilized without raising legitimate concern over "the consequences."

When I was a boy growing up in The States, there was a TV game show called "Truth or Consequences." Too often today I have seen a reality called "truth and consequences." The first was funny, but the second …

Whistle-blowers get little help if punished

International Herald Tribune
The Associated Press
1 November 2008

WASHINGTON: Military whistle-blowers might want to save their breath. The Pentagon inspector general, the internal watchdog for the Defense Department, hardly ever sides with service members who complain that they were punished for reporting wrongdoing, according to a review of cases by The Associated Press.

The inspector general's office rejected claims of retaliation and stood by the military in more than 90 percent of nearly 3,000 cases during the past six years. More than 73 percent were closed after only a preliminary review that relied on available documents and sources — often from the military itself — to determine whether a full inquiry was warranted.

The high rejection rates suggest scores of complaints aren't valid, that many whistle-blowers are whiners who are prone to exaggeration. But critics, including a Republican senator, wonder whether many valid cases are dismissed before being carefully examined because of attitudes in inspector general's office.

Indeed, a confidential government survey obtained by The Associated Press described a demoralized and ambivalent work force in the inspector general's office "at a high level of risk." Investigators who handle reprisal complaints believe supervisors don't value their work, the survey found. That has a direct bearing on employees' performance and how long they stay with the office. The AP obtained a copy of the survey's results under the Freedom of Information Act.

Whistle-blowing is risky business, particularly for those in uniform. They have fewer rights than their civilian counterparts and work in a culture where questioning leadership is frowned upon. Demotions, poor performance reports and letters of reprimand are commonly used to penalize or silence whistle-blowers. Any one of these can derail even a promising career.

The AP has learned the Justice Department is reviewing a reprisal case involving a Navy officer who challenged a recruiting policy in 2002 that favored white candidates over blacks and Hispanics. Jason Hudson was removed from his job overseeing more than 130 recruiters and received a negative performance evaluation.

The Navy eventually rescinded the disputed recruiting policy. But it said Hudson hadn't been punished for challenging it even though Hudson's attorney collected evidence indicating otherwise. In early 2003, Hudson asked the Pentagon inspector general for help. More than five years later, nothing has been done to challenge or reverse the Navy's decision.

"They are supposed to serve as the conscience of the Department of Defense. And they're not," said Hudson, adding that his views were his own and not the Navy's. "They don't have the ability or will to make things happen. They don't have any leverage."

Hudson was eventually promoted in November 2007 to lieutenant commander, the equivalent of an Army major. But the negative evaluation is still in his file and makes it unlikely he'll ever be promoted again.

Republican Sen. Charles Grassley, a longtime advocate for whistle-blowers, conducted his own inquiry into Hudson's case over the past year and found serious problems.

"The evidence seems to indicate that your office did not ask the Navy one single substantive question about the way the Hudson investigation was being conducted," Grassley wrote in an Oct. 23 letter to Gordon Heddell, who was named acting Pentagon inspector general in July.

A spokesman for the inspector general, Gary Comerford, said Heddell requested the Justice Department's inquiry. He declined to comment further.

Whistle-blower reprisal cases are handled by a small team in the inspector general's office called Military Reprisal Investigations, or MRI. It performs the investigation or makes sure the military department in charge does it properly.

Nine out of 10 cases come from soldiers, airmen, sailors and Marines. The rest involve defense contractors and Pentagon workers who aren't considered regular federal employees.

Just over 2,820 cases have been closed since October 2002. Yet in only 187 — or 6.6 percent — did the office find retaliation for whistle-blowing.

"Good work from the Defense Department inspector general has been the exception, not the rule," said Jesselyn Radack, homeland security director at the Government Accountability Project, a Washington-based public interest group. "For whistle-blowers in particular, that office has been a black hole."

The situation is only slightly better for whistle-blowers who don't wear a uniform, according to statistics from the Office of Special Counsel, an independent federal agency that reviews most of the reprisal cases filed by civilian government employees.

Between 2002 and 2007 — the latest statistics available — the special counsel received nearly 4,500 reprisal complaints. In 334 of them, or 7.4 percent, the office ruled in favor of the whistle-blower.

Even whistle-blower advocacy groups acknowledge some reprisal cases are bound to be dismissed due to misunderstandings or disagreements. But most whistle-blowers don't take the step lightly.

"They understand the consequences of filing a complaint," said Adam Miles, an investigator with the Government Accountability Project.

Military reprisal complaints are supposed to be settled within 180 days. Yet over the past 10 years, the number of employees assigned to investigate such cases has dropped from 22 to 19 people while the workload has increased by 68 percent, according to a report to Congress. Without more employees, the report said, meeting the 180-day requirement will remain an elusive goal.

Whistleblowers deserve more carrots, less stick

Tom Faunce and Tim Vines
Canberra Times, 24 September 2008

With the recent trial of former Commonwealth public servant Tjanara Goreng-Goreng on four counts of divulging confidential information, attention has once again focused on the often critical role of whistleblowers in exposing corruption and malpractice in government and private agencies.

Whistleblower support bodies have been calling for greater incentives to be accorded public servants and individuals in private corporations who come forward with evidence of fraud in an increasingly privatised health-care sector.

Currently a House of Representatives committee, chaired by Mark Dreyfus, QC, is investigating legislative reforms to protect past and present Commonwealth public servants who make a protected public interest disclosure.

The committee's investigation is timely. Griffith University's recently completed study into whistleblowing practices in Australia, Whistling While They Work, found that fewer than 2 per cent of public interest disclosures made by government employees "received organisational support." Moreover, a quarter of those surveyed reported subsequent retaliatory action and mistreatment by their employers. The Commonwealth's reaction in pursuing them as a "leak" is all too common in a professional culture where whistleblowers are usually viewed as disloyal employees with an anarchic sense of institutional values dobbing in their workmates.

Recent public disclosures by health professionals at four Australian Health facilities Campbelltown, Camden and King Edward Memorial hospitals as well as the Canberra Hospital have led to Government inquiries revealing dangerous clinical errors, substandard patient care and poor institutional culture.

Even here, physical harassment and intimidation along with criminal and civil lawsuits, unnecessarily adverse performance reviews, demotions and sackings are routine consequences of whistleblowing.

Yet, increasing attention must be given to creating mechanisms to prevent fraud upon the public purse. This even as the national debate continues about other important health-care topics, including: massive government subsidies for private health insurance and medical indemnity organisations; and the way private hospitals use Medicare payments to maintain revenue streams.

No doubt we should feel grateful that whistleblowers, motivated by virtue and a spirit of public service, are willing to risk their mental and physical wellbeing and job security to expose practices of wasteful government expenditure, corporate malfeasance and fraud. But isn't there also a responsibility on legislators to do the virtuous thing by whistleblowers and give them practical and support and encouragement?

One recent option placed before the House of Representatives inquiry into whistleblowing protections in the Australian public service was the provision of bonuses, higher superannuation increments and tax deductions, even promotions, to those whose efforts to expose malpractice are substantiated and lead to proven public benefit.

For this goal to be achieved, however, legislation would need to be in place that gives whistleblowers an anonymous channel of communication to an organisation outside the actual workplace concerned for example, to the Commonwealth Ombudsman.

In the US, one successful strategy for encouraging whistleblowers to reveal information from the private sector that demonstrated fraud upon the Government in the United States is the "qui tam" legislation.

Qui tam is an abbreviated form of a Latin maxim that means "He who sues on behalf of the government sues on behalf of himself."

Introduced by President Abraham Lincoln during the American Civil War to stamp out overcharging by private suppliers to the Union Army, the False Claims Act was amended in the 1980s to enable a private citizen to file an action on behalf of the Government alleging fraud by a private body and claim a percentage of any damages recovered by the Government (in the order of 15 per cent to 25 per cent).

Since 1986 "qui tam" suits have recovered $US8.4 billion for the Federal Government, with whistleblowers receiving more than $US1 billion.

Although qui tam actions against pharmaceutical companies represent only 4 per cent of total claims, they constitute 40 per cent of total moneys recovered by government.

If an item of fraud has not already been made public, any citizen acting through a lawyer may bring an action in the US Federal Court, even if he or she has only indirect evidence of an abuse of public money.

This claim remains sealed (not disclosed to the defendant) until the Department of Justice has investigated and decided whether it wishes to pursue the claim.

If a fraud has already been made public, citizens can still file a "qui tam" claim if they have new, direct evidence to support it.

Claims can also proceed even if the Department of Justice decides not to join. They can also be brought under state legislation, creating healthy competition between government sectors concerned to recover public money of which the rightful owners have been defrauded. Areas in the US where "qui tam" claims have provided a critical incentive to the recovery of government funds include:

- Improper Medicare billing (for services not provided, unnecessary services, or those where that entailed overcharging.
- Marketing a pharmaceutical outside safety guidelines or in ways that breach legal standards designed to protect the wellbeing of patients.
- Kickbacks to doctors to prescribe drugs.
- Misuse of government research funds.

Creating a "qui tam" system to encourage private-sector whistleblowers should be a policy priority in Australia if fiscal integrity in public health-care expenditure is to be maintained.

Associate Professor Tom Faunce and research associate Tim Vines are at the College of Law, Australian National University.

Articles

Tony Wong: whistleblower in prison

Anna Sternfeldt

I visited Borneo recently and among other things I interviewed Tony Wong who is in prison in Ketapang, Kalimantan, the part of Borneo that belongs to Indonesia. Ketapang is just south of two islands on Kalimantan's west coast, at the tip that stretches out.

Tony has worked with timber a long time and he has his own logging company but after he got more and more upset about the illegal logging he made a report to the police. He reported the big company Alas Kusuma illegally logging in one of Tony's sessions and in the protected forest Mount Lawang. But as we know, Indonesia is very corrupt and therefore nothing happened.

But Tony didn't give up and he succeeded in getting reporters from the Indonesian Metro TV to come to Kalimantan to make a documentary about the illegal logging. The activities were extensive: an enormous amount of timber was being shipped from Kalimantan further on to Sarawak (the Malaysian part of Borneo) which is a scandal in itself as Indonesia has a ban on exporting timber.

After Metro TV had shown its documentary on TV, the illegal logging from Ketapang became public and the national police from Jakarta came over to West Kalimantan to investigate the matter and they found that Tony was right in his allegations. This of course embarrassed and upset many people who had made money from the trade. Each boat with timber that left the harbour in Ketapang had to have a permission (telling that the cargo was okay, that it was legal) which was carried out by the local police and for which you have to pay. Each boat needed several permissions along the way.

Alas Kusuma has never been prosecuted; that seldom happens to the big guys. Instead a bunch of smaller lads were arrested and put in prison. Plus Tony!

He was arrested and accused of illegal logging, but due to lack of evidence he was instead charged with corruption, but later acquitted, as there was no evidence. After being released for three hours he was arrested again! Prosecuted once again for the first accusation of illegal logging, and before that case was over, Tony suddenly got a four years sentence for the first case about corruption. Talk about that things are happening behind the scenes.

In October I visited Tony Wong in prison in Ketapang and I actually got a photo of him and me together.

Tony is fighting an uneven fight against the corrupt system and against Alas Kusuma but he is not willing to give up. When I met him he said he refuses to keep quiet; he wants to continue the fight against illegal logging. He wants the rainforest to be preserved; he wants a Kalimantan for future generations.

You can visit Tony's blog at http://www.paktw.multiply.com. Much of the information is in Indonesia but there is also some in English: just scroll down a bit on the first page; there are several videos with English subtitles. The authorities are monitoring Tony's blog and if they see that the activities on the site increase they will understand that the information is spread and that Tony's case is not forgotten. Even better would be if you write something in his guestbook, even something short like "Well done!" or "Keep your spirit up." It is worth gold for a person in prison to know that people "out there" know that you exist. It is this knowledge that makes you feel that there is meaning in what you do. It is this link that carries you during bad days.

If you would like to know what happens to Tony and the illegal logging around his case, subscribe to my newsletter *Il Borneo* at www.sternfeldt.se/newsletter or ring me at 07 4069 5058.

Woolly-headed thinking works against the public interest

Cynthia Kardell

I want to talk to you about embarrassment, about how government or a government authority might become embarrassed by a whistleblower blowing the whistle to the media and the woolly headed thinking that says the possibility of public embarrassment is something that should be avoided in the public interest.

I have the NSW Protected Disclosures Act in mind, because it is the only act that allows a whistleblower to go to the media, but only after six months and on the assumption that (let's just call it government, for simplicity) would want to know about it, would want to fix things up and the public interest lies in that happening rather than having it splashed all over the Sunday news first.

But let me digress for a moment. Have you ever found yourself suddenly deaf and blind to the world, lost in contemplation about a phrase or a concept. One you must have heard

countless times and yet, suddenly it did not make a lot of sense?

I had one such moment in the witness box. I was being cross-examined by a barrister for my former employer. I was asked something like, "surely you knew you would cause your employer embarrassment?" It was one of those moments. Where have we been, I found myself wondering, that that question, that concept, could still be seen as reasonable in this day and age? Yes, in times gone by, when your employer was oppressive to the point of requiring lickspittle subservience, but not now.

I remember the barrister broke into my thoughts. "Ms Kardell, did you hear my question?" "Is he embarrassed?" I blurted out. "Well of course, what would you think? But did you mean to embarrass him? You must have known you shouldn't do that?"

Well no, I thought. I didn't think I had any obligation at all to save him from the embarrassment of his own actions. No, I didn't want to embarrass him necessarily. I just wanted him to fix the problem as I saw it. But if he was embarrassed, I thought, well maybe that's as it should be. But he should not be allowed to let his personal embarrassment stand in the way of his duty and obligations as a senior manager.

You see I think it fair to say that being embarrassed by your actions is a personal response to a personal situation. It's about you becoming aware you have been caught out and how you deal with that embarrassment is, as they say, the full measure of the man.

If you are sincere in your embarrassment, generally you want to make amends, to put the whole sorry business right, whether it is a personal or professional issue. This is an outcome that is obviously always desirable and, consistent with our Westminster traditions. So, holding back in these circumstances, because it might embarrass, wouldn't be in the public interest.

Equally holding back when a person makes a great show of being embarrassed isn't in the public interest either, because mostly they are not at all embarrassed. They are feigning embarrassment. Deliberately. We have all seen this person at work. They have no shame: they are taking advantage of any discomfort they might cause, to drive the argument in other directions and away from any question of their responsibility for their actions.

That is, whistleblowers should never hold back because it might embarrass: because embarrassment, real or not, is a personal interest and a personal interest should never be allowed in law to stand in the way of the public's interest in getting government to deliver good government.

There are those that might say yes, well that's all well and good but, there has to be a limit and particularly when our national security is threatened. Well possibly yes, but only in so far as it concerns actual military and intelligence operations. Not a decision made by government, ostensibly in the public interest, and one that might threaten the public interest.

Cynthia Kardell

There have been plenty of examples in recent times, like deciding to invade Iraq, because of the weapons of mass destruction that didn't exist. Andrew Wilkie knew the Howard Government had locked itself into a position based on bad intelligence and worse, had decided to tough it out and take advantage of our ignorance because it could. What Andrew Wilkie demonstrated was that there are times when nothing else but embarrassment and public exposure in the media will serve the public interest.

But those were heady times, so I have to ask myself whether generally, looking back over about 13 years, has protecting the government from possible public embarrassment by giving them the first opportunity to fix things up served the public well?

I would have to say no. The history is that time-based restrictions have seldom served the public interest. They have tended to protect wrongdoers from accountability, by providing them with the opportunity to cover their tracks and avoid an investigation. They have tended to operate mainly as a delaying mechanism and have failed to encourage and facilitate the timely in-house rectification of wrongdoing by the accused authority contrary to what you might have thought might have been the result.

Consider the matters recently disclosed by Toni Hoffman about Dr Patel and by Alan Kessing about airport security: both allegations prima facie raised urgent public interest issues about public health and safety requiring immediate attention.

Equally both had a real potential for causing public embarrassment to the relevant authorities and, we now know, which was the most compelling.

Not the risk to the wider public health and safety: in the Dr Patel matter the authorities were unmoved by Toni Hoffman's disclosures and apparently too busy stonewalling and finding fault with her to make the risk of actual and continuing harm their priority.

In both cases, the risk to public health and safety was allowed to continue unchecked until the allegations were exposed in the press and even then the authorities put protecting their reputations ahead of any other consideration.

The lesson here is that this sort of woolly-headed thinking has not served us well and it needs to be put aside. The opportunity to do the right thing when there is a vested interest is not enough to drive proper decisions. The possibility of acute public embarrassment, of being seen to be culpable, generally drives the issue underground and into cover-up, not timely investigation and resolution.

This woolly-headed thinking has to go.

Embarrassment, feigned or not, should not be a consideration in deciding whether or not a whistleblower should be able to go directly to the media.

That is, time-based restrictions on making disclosures to the media are not warranted: not by the history and not by any cockeyed notion that an organization will see sense if they are

given an opportunity and (they) will not just do nothing, hoping that the whole issue will just go away over the next six months if they give the whistleblower a hard time.

You might well ask whether it is possible that a time-based restriction could work if it was modified in some way. Possibly, but only if a public interest test was applied in a mandatory process that restricted and took account of the natural tendency to want to do nothing, particularly when embarrassment threatens. That is, a carrot, but with some real stick: one that required the agency to do a preliminary prima facie assessment as to the nature of the disclosure and the degree of the urgency so as to determine *whether and why* a delay *would not be* contrary to the public interest. That assessment would be carried out within say three to five days and it would assume (for the purpose) that the disclosure (allegation) was essentially correct. The authority would be required to notify the whistleblower of its decision and reasons for the decision in writing, within 7 days taken from the date of their receipt of the public interest disclosure.

Then in the event that the whistleblower disagreed with the authority's assessment and took the same or substantially the same disclosure to a journalist or an MP, the authority would, on being notified, be able seek an injunction to restrain the publication of the information. The authority would bear the onus of establishing that its decision was not contrary to the public interest and that it had complied with the process in a reasonable time. Why? Because the authority has the information and it should be *obliged by law* to open itself to scrutiny in the public interest.

In the event the authority failed to *notify* its decision within say 14 days, the whistleblower would be at liberty to take the public interest disclosure immediately to the media or an MP, without being at risk of an injunction or loss of protection under the act.

This system would provide a real choice. Do the job or face the consequences.

Finally, concerning whistleblower and journalist protections: there has to be a presumption as to protection, a presumption that is only ever put to the test when and if the whistleblower or journalist relies on it as a legal defence.

Such a presumption would work in a practical way to legally oblige the authority to take a public and principled stance in assuring a whistleblower that they have the full weight of the authority behind them in protecting them from the reprisals that otherwise might be inflicted.

Cynthia Kardell, a lawyer, is secretary of Whistleblowers Australia.

Egalitarianism and the failure of whistleblower protection

Anthony J. Evans

Whistleblowing is an egalitarian phenomenon

According to a framework developed by anthropologist Mary Douglas, all social groups can be analysed in terms of two dimensions: *grid* and *group*. When people are subject to imposed regulations, *grid* is high; when they are free to negotiate on an individual basis, *grid* is low. When people feel bound by allegiance to a collectivity, *group* is high; when they have little allegiance, *group* is low.

	Low group	**High group**
High grid	fatalist	hierarchist
Low grid	Individualist	egalitarian

We can use these types to help understand the cultural foundations of whistleblowing.

Fatalists: when an employee is offended or frustrated by a something, the easiest and perhaps most common response is to do nothing — inaction is an obvious response when encountering wrongdoing. Indeed, whistleblowing often makes life more difficult and if an employee doesn't expect actions to lead to beneficial change, it wouldn't seem worthwhile to disrupt work patterns and be labelled as a dobber. In the worst case, you'd be sacked and unable to find another job. Fatalists keep their heads down and feel vindicated by the experience of whistleblower Sibel Edmonds, who said "Five years of fight and it's like, 'Why do we even blow the whistle … it didn't fix the system'."

Individualists are aware that whistleblowing is costly; they keep quiet for their own sake. Peter Rost, who blew the whistle against the drug company Pfizer, offers an individualist's regret: "Unless you're independently wealthy, there is really no upside for you to blow the whistle."

Hierarchists are team-players and do not want to cause any trouble by challenging an authority figure.

Egalitarians are committed to the group but do not always conform to imposed regulations. Therefore they most closely approximate what whistleblowers actually do.

Anthony J. Evans

There is an apparent tension in the fact that egalitarians and hierarchists share solidarity (high group), yet whistleblowing is commonly seen as involving discord: "Another reason why employers are reluctant to hire whistleblowers is because their action is seen as a breach of loyalty." The resolution of this tension is that egalitarians and hierarchists have different ways of defining the boundaries of the group, and thus loyalty. The aspect of insubordination present in whistleblowing is due to the crossing of a boundary that hierarchists treat as inviolate. Researchers Myron and Penina Glazer state: "Whistleblowers, we discovered, are conservative people devoted to their work and their organisations … invariably, they believed they were defending the true mission of the organisation."

When hierarchists claim that whistleblowers are disloyal, this is unfair because actually whistleblowers are loyal to what they understand as

the principles of the organisation, or indeed loyal to the wider community. Whistleblowers, who are often dismissed as not being team-players, do self-sacrifice; it's just that they have a different allegiance. *They are high group: they are more likely to be martyrs than mercenaries*.

Whistleblowers often experience a "duty to disobey," thereby revealing how disobedience can be part of a higher moral code. There's an analogy to the dynamics of a sect, in which dissent is kept under control but only *internally* — sects are prime producers of dissent that crosses group boundaries. This is what occurs with whistleblowing. As Mary Douglas says, "enclave [egalitarianism] is a good solution for organising protest and dissent."

To summarise, two key traits are required for whistleblowing. Firstly, blowing the whistle involves a degree of empowerment: a willingness to challenge people in authority. This is weak grid. The second key trait is a sense of righteousness or, in other words, a belief in self-sacrifice for the common good. This is high group.

Both these egalitarian characteristics are revealed in William De Maria's book *Deadly Disclosures,* a thrilling survey of whistleblowing. His central thesis is that Australia is suffering from an "ethical meltdown" brought about by three trends. The first is a "deteriorating standard of ethical behaviour of people who control economic and political power, whether they be politicians, bureaucrats or company directors." This is a low-grid point of view concerning the abuse of power in hierarchies and a lack of confidence in leadership. The second trend is an "erosion of our collective sense of responsibility to speak out against wrongdoing and injustice," and the third is "impoverishment of the public sphere." These are high-group issues deriving from strong allegiance to collectivities and commitment to justice as the "prime virtue" of egalitarian culture.

In any organisation, effective channels of communication are important for renewal and innovation; dialogue is the preserve of the egalitarian culture. Low grid is linked to independence of thought and "professional martyrdom" ties into the idea that "egalitarianism is characterised by strong idealism." According to C. Hood, three egalitarian responses to public-management problems are "participation, communitarianism, whistleblowing." The implication of this analysis is that egalitarianism is the only one of the four cultural types with a special affinity with whistleblowing.

Typical measures to deal with whistleblowing fail

There is an inherent tension between whistleblowing and the methods typically used to resolve problems in workplaces. The long record of failure in whistleblower protection results from a clash between hierarchical and egalitarian cultures. The *Financial Times* quoted a senior executive at BP declaring, "We have a leadership style that probably is too directive and doesn't listen sufficiently well … [a particular BP practice] needs to be deplored with great judgement and wisdom."

The workplace problem is that authority overpowers information flows but, contradictorily, the proposed solution lies in greater reliance on expert opinion, which is tied to authority. In terms of *grid* and *group,* leadership (a hierarchical process) and communication (an egalitarian process) fundamentally conflict with each other; to "listen better" requires dismantling the corporate ladder, not merely putting it to better use.

The American Institute of Certified Public Accountants offers guidance to potential whistleblowers, suggesting that concerns be raised at a higher level of management. In essence, the regulator's solution is hierarchical, even though whistleblowing is an egalitarian phenomenon. It is senseless to attempt to solve an egalitarian phenomenon with hierarchical mechanisms: the process needs to be compatible with underlying values.

The evidence seems to support this conclusion. A decade after the first Australian whistleblower law, Kim Sawyer said "there has not been a single prosecution under any Australian whistleblowing act. Whistleblowers simply do not use the legislation." Similarly, P. G. Thomas wrote in 2005 that "the comparative experience of four countries where whistle-blower protection laws exist demonstrates that the benefits of such laws in terms of promoting 'right-doing' and correcting wrongdoing have been oversold." According to the Project on Government Oversight, the US *Whistleblower Protection Act* "suffered from a series of crippling judicial rulings [that] have rendered the Act useless, producing a dismal record of failure for whistleblowers and making the law a black hole."

Legislative responses are doomed to fail. Indeed, *any hierarchical solution is doomed to fail,* including escalating a problem through the internal chain of command. Formal protocols place people in a hierarchical structure and therefore a conversation as equals is unlikely, which means issues aren't discussed openly.

Because most business firms are hierarchical cultures, we can expect tensions whenever employees think independently. Indeed, it can be said that *corporations inherently suppress dissent.* Suppression doesn't have to involve violence, but can occur when people in authority ostracise or punish a subordinate, for example through closer monitoring, unwelcome reassignments, adverse appraisals, denial of promotion and pay rises, etc. As sociologist Deena Weinstein argues, bureaucratic organisations are similar to authoritarian political systems in which freedom of speech is curtailed and independence of thought is discouraged.

The failure of typical hierarchical responses to dissent shows why whistleblowers are so often expelled from the group. Whistleblowing involves switching from behaviour typical in a hierarchical culture to behaviour typical in an egalitarian one. This change is usually involuntary, as whistleblowers have the best of intentions when attempting to use official channels. Switching to an egalitarian sort of action is a last resort.

In hierarchical cultures in which loyalty is misunderstood, the expression of dissident viewpoints is often more threatening than what the viewpoint are. Therefore, whistleblowers are expelled from the organisation and subsequent investigations often focus on their personalities, such as psychological explanations for why they would be disloyal. In hierarchical cultures, organisational longevity and

commitment to the systems in place dominate over any criticism or individual reservations: any challenge to what is done or how it is done is treated as a challenge to the organisation itself. This is why whistleblowers are so often expelled and badly treated.

An article in *Time* magazine stated: "But ask them [whistleblowers Cooper, Rowley and Watkins] if they have been thanked sincerely by anyone at the top of their organization, and they burst out laughing. Some of their colleagues hate them, especially the ones who believe that their outfits would have quietly righted all wrongs if only they had been given time."

Cultivate whistleblowers

The key message from the egalitarian perspective is to "appreciate the value of dissent in your organisation" and thus to *listen to whistleblowers*. A culture of criticism and open dialogue may strike the hierarchist as chaotic and threatening; to the egalitarian it is a sign of success. Both are correct from the point of view of their own systems of rationality, but both are biased. Truth lies in the balance.

Whistleblowing is usually a last resort and, as such, it is a sure sign of a dysfunctional organisation: it is an egalitarian-style parting shot containing valuable information. If effective internal communication channels existed, they would foster a culture of debate and criticism and thereby turn dissent into a source of strength and the potential whistleblower's concerns into a strategic advantage.

This article draws on ideas in Anthony J. Evans, "Dealing with dissent: whistleblowing, egalitarianism, and the republic of the firm," *Innovation: the European Journal of Social Science Research,* volume 21, number 3, September 2008, pages 267-279. Brian Martin contributed to editing. Citations and references have been omitted.

REVIEW

Whistleblowing in the Australian Public Sector

reviewed by Peter Bowden

This recent publication on whistleblowing in the Commonwealth government is the result of a massive research program comprising eight surveys across the public service. The largest of these sent out 23,177 questionnaires, to which 7663 public servants from 118 agencies responded. The contributors to the research, from fourteen state and the federal government ombudsman and anti-corruption agencies, along with five universities, led by Dr. AJ Brown of Griffith University, editor of this work, have provided a baseline for research on whistleblowing in the public sector for many years to come. It will also hopefully lead to a number of immediate reforms, many of which are currently being considered by a parliamentary committee on whistleblowing.

Peter Bowden

It is important at this early stage therefore to determine the key lessons learned and, in particular, that the conclusions drawn are soundly based.

The principal lessons are set out below; another reviewer might place their emphases differently.

1. The high level of observed wrongdoing and the low level of reporting this wrongdoing indicated that considerable improvement was possible, even necessary, in the methods used to identify and correct wrongdoing in public sector organisations.
2. The finding that whistleblowing is the single most effective method of stopping wrongdoing in an organisation is of considerable significance in strengthening ethical practices.
3. The observation that internal whistleblowing outcomes vary widely across agencies raise the possibility that different ethical regimes exist across the Commonwealth Public Service. The agencies with high reporting and high resolution of wrongdoing with low retribution rates also suggest that the effective internal management of whistleblowing is a feasible proposition.

The book also makes many recommendations. Whistleblowers Australia will particularly welcome the two major recommendations.

1. The need for an external support agency, together with a statement of its tasks.
2. A set of guidelines for managing whistleblowing more effectively, including the introduction of best practice legislation

The conclusions on factors that drive (or deter) whistleblowers and that affect their handling are also worth noting:

- The motives of the whistleblower are immaterial (p. 11). Prior conflict may exist for very valid reasons (pp. 37, 39).
- The reasons for not reporting a wrongdoing are primarily the belief that nothing would be done, followed closely by fear of retaliation by the agency (p. 72).
- The propensity to whistleblow increases with the seriousness of the offence (p. 77).
- The reliance on criminalisation as a deterrent is misplaced (p. 130).
- The extent to which a whistleblower is kept informed of the outcome of the investigation leads to better outcomes for the whistleblower (p. 118).
- A whistleblower whose disclosure is not substantiated faces a much greater risk of mistreatment (p. 119).

The study does have some weaknesses. Its definition of whistleblowing, which initially included personal complaints, is possibly the major one, but there are others.

The high level of wrongdoing

The study found that 71% of respondents "saw wrongdoing in the last two years" with 39 % indicating that they had "reported the most serious wrongdoing" (p. 38). The study calculates that this whistleblowing rate is equivalent to 197,000 disclosures annually across the entire public service (p. xxiii). This finding may be subject to the definitional issues discussed below, but it is nevertheless a near unbelievably large volume of wrongdoing. It also shows a disappointingly small number of people who do anything about it.

The principal reasons for not reporting the wrongdoing, the belief that nothing would be done and fear of reprisal, highlight the benefits to be derived from the adoption of effective administrative processes to encourage and protect people in the Australian public sector to speak out against wrongdoing.

Whistleblowing is the most effective tool for stopping wrongdoing

The superior utility of whistleblowing in stopping wrongdoing is a finding that has much support in the ethics literature. In this study, managers in general, as well as ethics case handlers in the line agencies or in anti–corruption bodies — some 765 respondents — rated reporting of wrongdoing by employees as more effective than any other method, including routine internal controls, audits, or even management observation (p. 45). A similar conclusion is on p. 26. Surveys on fraud in the private sector conducted mainly by the big accounting companies confirm this figure. See for instance, Price Waterhouse Coopers 2007 Survey on economic crime, based on interviews in over 5,400 companies located in 40 countries. This survey found that whistleblowers reported 43% of fraud identified in companies. Professional auditors were able to detect only 19%. Fraud against companies is a different issue to wrongdoing by companies, with companies more likely to support internal whistleblowing systems that detect fraud against them, but it is nevertheless an indication of the willingness of staff and outsiders to report wrongdoing.

The variation in treatment across agencies

The response to wrongdoing varied enormously from agency to agency. For example, observations of wrongdoing that were not reported varied from less than 10% in some agencies to more than 50% (p. 2). The extent to which an agency ignored the complaint (the inaction rate) ranged from 7.4% to 43% (p. 48). While the lowest rate of mistreatment of whistleblowers was close to zero (p. 111), this rate was as high as 50% in other agencies (p. 298). These figures would suggest different levels of institutionalising ethical practices exist across the public sector. If this assumption is correct, it raises the question of what factors create these different levels. The literature on institutionalising ethics practices suggests several factors — both explicit (codes of ethics, internal whistleblowing systems, ethics committees, ethics training, etc) and implicit (sense of values imparted by senior executives). The large variations suggest that some agencies are deficient in institutionalising ethical practices.

The surveys found in fact that only five out of 175 agencies surveyed had developed systems for managing whistleblowing.

In a culture with the same code of values, same performance evaluation systems, and same or similar training practices, the cause behind the big variation would seem to be the values and practices imparted to an organisation by its chief executive, and adopted by its senior executives. But there could be other factors. The type of agency, for instance, whether a policy, regulatory or service agency, could influence ethical behaviour. We do not know, but the report tells us that the core business of the agency would not appear to affect its ethical stance (p. 301).

The huge variation in ethical performance of the agencies also suggests that the Public Service Commission's guidelines need substantial revision. The Commission only covers staff employed under the Australian Public Service Act, or just over 50% of public servants covered by the study, but it seems reasonable that APS Act employees were responsible, as much as those outside it, for the variations of this magnitude.

The Griffith study is able to make the comparisons between different categories of employed staff and different agencies. Comparative information on ethical practices would be extremely sensitive, but also very useful for the public and employees to know. Such comparisons would be able to identify the impact of different ethical regimes across agencies. Such comparisons would also provide a method by which an oversight agency could assess the reliability of the whistleblowing reports made to it. Agencies whose reporting, investigation and reprisal rates conformed to acceptable standards would require less attention than those with a poor institutionalising of ethical practices.

The need for an external support agency

The recommendation for an "oversight agency" (p. 310), with associated legislative reform, is based on the wide variations and other weaknesses in managing whistleblowing that surfaced in the research. Its tasks would be, on notification by the agencies, to coordinate responses to whistleblower disclosures, and if necessary direct the investigation. It would provide advice or direction to agencies in supporting whistleblowers, as well as undertake remedial action for those who had suffered retribution.

The agency would also publish guidelines, provide training, and review the effectiveness of the legislation every five years.

The recommendations appear to be well thought out and soundly based. There is no recommendation on a location for the oversight agency, except that its staff, if within an existing agency, should have experience in investigations and case handling.

Managing whistleblowing effectively

The research made a series of recommendations in addition to the need for the oversight agency. They were aimed primarily at managing the whistleblowing processes within the agencies, with the oversight agency providing support and direction. Recommendations included the development of new, flexible management practices, including risk

and safety assessments on receipt of a whistleblower's information, recording and documentation systems, plus widespread training for managers, investigators and support staff on expectations and practices in handling whistleblower complaints.

The definition issue

The definition of whistleblowing — the "disclosure by organisational members of illegal, immoral or illegitimate practices under the control of their employers…" (p. 8) includes personal grievances, classified as "Personnel and Workplace Grievances" (p. 15). Whistleblowing "is also taken to mean disclosure … about matters of public interest" (p. 8). The definition adopts the term "whistleblowing" as disclosures in the public interest, excluding personal grievances (p. 14), and "internal witness" or "reporting" as including these grievances. The distinction, however, is not always clear.

Definition of the public interest can be difficult. A regulatory agency, for instance, may pursue a personal complaint in the public interest, to test an important issue, or if the nature of the conduct or the frequency with which it occurs is such that the agency's action may deter similar conduct in the future. In addition, personal complaints still need to be included in the system, for they otherwise become a vehicle by which agencies can sideline a disclosure of a genuine wrongdoing.

The conversion from reporting to whistleblowing or vice versa is made by adjusting responses under the personnel grievance category. This adjustment is arguably faulty. There are six Personnel and Workplace grievances — racial discrimination, harmful working conditions, unfair dismissal, incorrect staff selection procedures, favouritism and bullying. These last two have the second and third highest reported rate of some 39 categories of wrongdoing (p. 29). There are, however, categories that could result from personal or personnel issues, such as "Covering up poor performance" or "Incompetent or negligent decision making" which are classified as public interest wrongdoings. These categories of wrongdoing are the first and fourth highest wrongdoing types reported under the survey. As the first four responses added to well over 100%, we can only assume that some people were accused of more than one wrongdoing.

Many among us have experienced a supervisor whom we regarded as sometimes making incompetent decisions. Most of us have said nothing, but some will have spoken out. They thereby could be classified as public interest whistleblowers in their response to the survey. The extent of public interest, however, could be very subjective.

Nowhere is the lack of definitional clarity, and impact on findings, more acute than in the reprisal rate measured by the study. This was directly measured at 22% (p. 123). Adding on an estimate for those whistleblowers who may have left the Service, the reprisal rate may come to 30%. But people claiming to report negligent supervisor decisions are unlikely to earn reprisals from the organisation. In addition, case handlers and managers have stated that 53% of employees who report wrongdoing "often or always" experience problems (emotional, social, physical, or financial) and a further 38 % state that it is "sometimes" the case (p. 134). Although not necessarily retribution, 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.

In addition, 41% of whistleblowers report wrongdoing "below/same as my level" (p. 66). Retaliation is not easily achieved from a level of employee below the whistleblower, which would again suggest that the further up the organisational chain that the whistleblower targets, the higher the retaliation rate. If we assume that the personal complaint rate is 40–50%, higher than the study's estimate, and that many making personal complaints are not treated badly by colleagues or managers, then the reprisal rate for genuine public interest whistleblowing would be much higher. In addition, "whistleblowing" on issues which benefit the organisation (reporting individual rather than organisational dishonesty, such as fraud, or failing to take a full workload, etc.) is unlikely to generate bad treatment (and in fact may even earn a commendation). The above considerations suggest that the rate of reprisal against whistleblowers trying to prevent organisational activity that is against the public interest could be very high — perhaps in the order of 60–80%

The definition issue is one concern with the results of this research. Others — the classification of appendices and the lack of an index, which do create reader difficulties — are minor.

The forthcoming report

This publication is the first of two, the second delving into the quantitative data more deeply, but also conducting interviews that explore in depth the responses of whistleblowers and case handlers. It is hoped that this exploration delves into a number of additional concerns. The public interest definition issue is one. It is my belief that in many cases the public interest can only be determined by interview, but it may be possible to develop a definition that makes classification relatively straightforward. A second concern is with the proposed legal and administrative mechanisms. The recommendations of this first report on the establishment of an oversight body follow in broad outline the recommendations of the 1994 parliamentary inquiry. There are other possibilities which should be explored — through Labour Law as in Britain, for instance, or when substantial sums of public money are saved, through compensation for the difficulties and retaliations that whistleblowers encounter, as in the US — a whistleblower law described by some as the most effective of all. The next volume should at least consider these options, even if it may eventually discard them, rather than ignoring them entirely.

AJ Brown, editor, *Whistleblowing in the Australian Public Sector. Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations,* Australian National University E Press, Canberra, 2008 (available by free download or $29.95 for a printed copy).

Peter Bowden is President of the NSW branch of Whistleblowers Australia.

Whistleblowers Australia 2008 National Conference

Australia's forgotten generation: the whistleblowers
Saturday 6 December
University College,
University of Melbourne

Notes by Brian Martin

The right to know panel

"The right to know" is the title of a campaign by major media organisations in Australia to challenge various methods used by governments to restrict access to information, for example through blocking Freedom of Information requests. A spokesperson for the campaign was originally scheduled to speak, but at the last moment became unavailable. Conference organiser Kim Sawyer improvised with four speakers from Whistleblowers Australia.

• Jean Lennane told about her experience as a whistleblower. She was a psychiatrist employed by Rozelle Hospital and spoke out against cut-backs on services and as a result lost her job in 1990. The next year she was involved in setting up Whistleblowers Australia. Jean told about some of the ongoing issues involving mental health — the need to be able to speak out remains important. She served as president of Whistleblowers Australia for 10 of its 17 years of existence and is currently vice president.

• I commented on the changing amount of information concerning whistleblowing. Two or three decades ago, there was very little information. Indeed, even the term whistleblowing wasn't well known; finding information about cases or patterns was challenging. Today, media stories about whistleblowing — and using the term whistleblowing — are commonplace. The biggest change in access to information came with the rise of the World Wide Web in the mid 1990s. Previously most people who contacted me about whistleblowing did so by phone, with a few sending letters. Today most contact is by email, with occasional phone calls. So Whistleblowers Australia needs to rethink its activities in the light of the importance of the Internet.

• Peter Bennett — Whistleblowers Australia's current president — spoke about his experiences trying to get information out of government bodies. He made numerous Freedom of Information requests and then on eight occasions, when requests were denied by agencies, took the matter to the Administrative Appeals Tribunal. On some occasions he was a lone individual up against a phalanx of highly paid opponents: senior government bureaucrats and a legal team of QCs, barristers and solicitors. Against this array of legal expertise, he sometimes lost cases, with the unfortunate consequence that a precedent was set for future denials. The only way to challenge such precedents was to take the matter to higher levels, namely courts. But this is very expensive. In one key case, Peter proceeded with the support of his union, the Customs Officers Association. The cost of this case was $110,000. Luckily most of the costs were recouped.

• Cynthia Kardell, secretary of Whistleblowers Australia, told about shortcomings of whistleblower laws, specifically the lack of enforcement mechanisms. She recommended laws that put no weight on alleged embarrassment of agencies. Her comments are reproduced in this issue, on page 6.

Mark Dreyfus

Mark Dreyfus, Chair of the House of Representatives Standing Committee on Legal and Constitutional Affairs, spoke on whistleblowing legislation. He worked as a lawyer for many years with a special interest in defending free speech. In November 2007 he was elected to parliament.

At the federal level, laws to protect whistleblowers were discussed through various parliamentary committees, reports and proposed bills from 1990 onwards. However, nothing was enacted before the Howard government was elected in 1996, after which nothing much happened for a decade. After Labor's election in 2007, activity recommenced. In mid 2008, the committee chaired by Dreyfus was asked to inquire into whistleblowing laws. The committee's focus is on public interest disclosures from within the federal public sector. The committee will be recommending on preferred forms of legislation.

Mark told about the many reasons why whistleblower legislation is important, mentioning some prominent cases. He commented on the Whistling While They Work project and on submissions to his committee.

Questions and comments

Discussion after the talk was vigorous, with many questions for Mark. Sometimes it was hard to figure out what question was being asked. That was okay — these comments were accepted as statements of important issues. Only some questions and/or statements are mentioned here.

Col asked what the committee would do about the problem that courts gave no support for whistleblowers — namely the problem that the law seemed okay but it wasn't enforced. Mark responded that when cases reached courts, that was a bad sign. The committee's goal was to set up a system in which most cases were resolved without having to go to court.

Following a question about whether the committee had heard from whistleblowers, Mark said yes, through hearings or submissions. However, in some cases evidence was provided *in camera,* as in the case of whistleblower Toni Hoffman because open hearings might prejudice the case against the doctor, Dr Patel, about whose actions she blew the whistle. Mark said he preferred submissions and evidence to be public.

Greg McMahon asked about making disclosures outside the normal line of command, and raised the possibility of a new body to receive disclosures. Mark gave reasons why the government preferred using existing agencies such as the ombudsman — not least because of the costs involved in setting up a new body.

Stacey commented that whistleblowers, when they suffered reprisals, became more involved in resisting the reprisals, with less attention on the

issue about which they originally blew the whistle.

Following a comment by Peter Bennett, Mark commented that the committee kept in mind the central purpose of legislation was to enable employees to be able to raise matters so that organisational operations could benefit. Protecting whistleblowers is important but the underlying rationale is the benefits to organisations and the public.

Kim Sawyer

Kim spoke about the False Claims Act. It is the most powerful anti-corruption law in the US in terms of money recovered. Yet it has received little support from Australian lawmakers.

Kim used a recent example: anonymous informants from the Victorian Funds Management Corporation disclosed information about poor investments to journalists. The lesson from this case, for Kim, is that the disclosure was too late: the costs of the poor investment — $150 million — had already been incurred.

The whistleblowers at a late stage in an organisation's disaster — such as Enron — are more likely to receive recognition, because everyone can see that they are right. But earlier-stage whistleblowers, who recognise organisational problems before they become a public scandal, are in a more difficult situation, without endorsement and more subject to reprisals.

Kim presented information about a tremendous increase in whistleblowing in the US in the past decade, a change he attributed to the extension of commercial methods to previously public agencies such as universities. He presented the seven principles of an ideal whistleblowing law from an article by Robert Vaughn, Thomas Devine and Keith Henderson published in the *George Washington International Law Review* in 2003.

The US False Claims Act fits the principles. It has been so effective that industry groups have pushed to repeal it. This is quite significant. Kim noted that there have been no attempts to repeal Australian whistleblower laws — there's no need, because they don't work! Repeal efforts show that the US False Claims Act has been effective.

Questions and comments

In response to a question, Kim said he had presented his arguments for an Australian false claims act to Mark Dreyfus' committee. He said that if legislators really believed in whistleblowers, they would promote something like a false claims act — but, Kim said, in practice they don't.

Greg McMahon commented that the key to such acts is the fraud recovery. The massive amounts of money recovered could be used to fund a whistleblower protection body.

Keith Potter asked how a whistleblower on a public safety issue could be compensated. This isn't as straightforward as fraud. One way, said Kim, is to assess the amount of money required to eliminate a risk, for example to clean up a source of hazardous chemicals.

In response to a question from Peter Bowden, Kim commented that protections for false claims act whistleblowers are quite strong — except before the case is accepted.

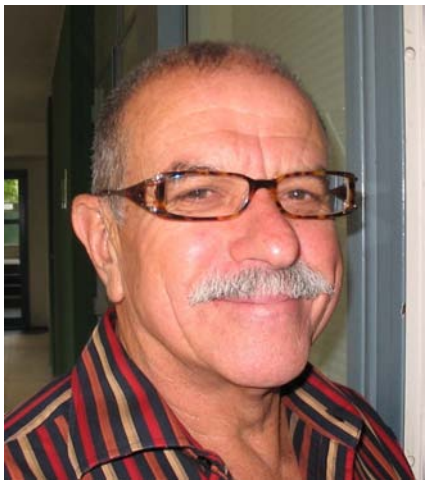
Bill De Maria

Bill commented on the national whistleblowing inquiry, on Mark Dreyfus' presentation and the composition of his committee, on the Whistling While They Work (WWTW) study, and on his views on whistleblowing.

Bill said that Mark Dreyfus was uncritical of senior bureaucrats — Bill thinks whistleblowers have higher goals than making the public service work better — and a view that levels of corruption in Australia are low. According to Bill, Mark was deferential to WWTW study and didn't take initiative to find other sources of information about whistleblowing.

Bill thinks whistleblower laws aren't worth the paper they're written on. But if there are going to be such laws, he thinks they should include sector penalties: when whistleblowers suffer reprisals, the entire work group could be penalised — not just the alleged bad apple.

The Dreyfus committee has a poor composition, according to Bill. One member is Kevin Andrews, who may be subject to an adverse finding in the Haneef affair. Two other members of the committee are Sophie Mirabella and Belinda Neal — and Neal, it is said in the ALP, will not receive preselection at the next election. Neal was also subject to criticism over her statements concerning Mirabella. The tension between Mirabella and Neal may help explain some of Mirabella's many absences from the committee hearings.



The committee is composed of politicians most of whom have aspirations for many more years in parliament — which requires getting along with senior public servants — and all of whom are committed to party solidarity and never crossing the floor. These members have not demonstrated willingness to dissent in their own careers — so how are they to sympathise with whistleblowers?

Re WWTW, Bill said what we need is more wisdom, not more data. There's plenty of data about whistleblowing, especially about laws. What's needed now is action. But WWTW provide a managerial response to whistleblowing.

We don't need more research into whistleblowers. We don't need more whistleblower stories. Whistleblowers

have been put under the microscope. Instead, we need more study into non-whistleblowers.

The focus on whistleblowing is linked to muting of the collective voice of employees. Actually, collective action is far more effective. Indeed, whistleblowing may even be partly to blame for weakening of collective action. There's no research evidence that solo action is effective. US whistleblower researchers Marcia Miceli and Janet Near couldn't come up with any evidence that whistle-blowing led to change. Whistleblowing can disclose wrongdoing, but isn't producing enduring organisational change.

Toni Hoffman's disclosure didn't inspire others to expose problems in Queensland Health. The implication is that policies should not be built around whistleblowers, whose unique moral characteristics are not contagious, but around the majority who don't disclose.

Whistleblowing is now firm-friendly. Most whistleblower research is oriented to management. Managers want to know about problems before they're in the media.

Whistleblowing is becoming a domesticated form of dissent, fitting into a moral landscape in which organised resistance is pacified. What's needed are new forms of collective insurgency in the workplace that make individual whistleblowing redundant.

WBA's strategy is flawed because it relies too much on agencies that are morally corrupt. The only real ally is the quality media. More intermediate groups are needed. If a bill of rights guarantees free speech to workers, it will supersede any whistleblower legislation.

Wayne Bruce

Asked to speak about whistleblowing and the private sector, Wayne Bruce from STOPline told about his organisation. Its core business is provision of whistleblowing programmes and hotline services. When it began in 2001, there was only one other such organisation: KPMG's Faircall. Now there are lots of other organisations. 70% of STOPline's business is in the private sector, but it also does public and nonprofit sector work. When people think of hotline services, they think of reporting fraud. Actually though, many of the concerns brought to STOPline are bullying, harassment and sexual harassment — areas that may not be covered by whistleblower laws, and individuals may not want their identity disclosed. Two-thirds of reports come by phone; people like to talk. Two-thirds want to be anonymous, mainly due to fear of reprisals; one-third remains anonymous even to STOPline.

Wayne described some of the recent laws that affect private-sector disclosures, including the Sarbanes-Oxley Act in the US, the Public Interest Disclosure Act in Britain, and Australian Standards on Corporate Governance. The problems with laws are narrow interpretation, limited scope and limited protection for whistleblowers; anonymity is the best shield. Australian whistleblower laws show this clearly.

Organisations fear vexatious calls, but actually there are hardly any. Another fear is being swamped by complaints, but it doesn't happen. Organisations fear loss of control, but actually whistleblowing policy is part of a package of policies. Organisations also say hotlines won't work because Australians don't dob — but actually they do, for example in 177,000 calls to Crime Stoppers in 2007-8 and tens of thousands of calls to other agencies.

What do whistleblowers fear? First is loss of control. So whistleblowers need to be reassured about protection of their identity and use of their information. Other fears are of reprisal and breach of confidentiality.

The key to a workplace whistle-blowing programme is promoting it to employees, for example through brochures, posters, intranet, Internet and presentations.

Questions and comments

In response to a question from Greg McMahon, Wayne commented that the number of reports to STOPline or other channels is not necessarily an indication of how well an organisation is handling problems. In some cases, an executive's open commitment to STOPline's services led to employees communicating to the executive, an excellent outcome without requiring reports to STOPline. The corporations that are doing well have open channels of communication.

In response to a question from Keith Potter, Wayne explained how the anonymity of informants can be ensured. An example is that in compiling a report for a firm, all details that might identify the informant are removed: the report is sanitised.

In response to a question, Wayne said STOPline, based in Victoria, provides services throughout Australia and several other countries.

In response to another question, Wayne said STOPline manages the disclosure process until there's an outcome that can be reported to the informant. It may or may not be what the informant wanted, but it is important that some closure is reached.

Evelyn Field

Evelyn's topic was whistleblowing and bullying. She has immense experience on bullying and how to deal with it: see www.bullying.com.au for lots of information. She commented that many people who understand school-yard bullying or discrimination against ethnic minorities do not grasp the significance of workplace bullying. There's a lot of research into school bullying and some of the insights can be applied to workplace bullying.

Evelyn gave a rapid overview of what's known about workplace bullying: its prevalence, how it's carried out, its impacts, how it's denied, its causes.

The typical journey of a target of bullying begins with the initial impact. Then comes an unsuccessful attempt to deal with the problem. Then comes powerlessness and paralysis, a search for justice, coping with injuries, mourning your losses and becoming a survivor — a process that takes typically 6 to 8 years.

Evelyn has plenty of experience treating victims of bullying. If treatment begins during the initial stages of bullying, it can be effective within a matter of weeks; down the track, after the bullying has traumatised the victim, treatment will take far longer, perhaps years. There are also problems in diagnosis, compounded by a lack of research into treatment, a lack of knowledge of bullying among psychiatrists (who are usually the

preferred practitioners), and undermining of treatment teams.

Bullying affects individual targets, of course, but also affects organisations, harming productivity with a tremendous cost to society. The financial cost in Australia alone is many billions of dollars annually.

If you're being bullied, look after your emotional and physical health. Obtain support: see a doctor or psychologist. Maintain records of the bullying and of your performance. Protect yourself financially. Seek advice from lawyers and union officials. Get feedback from others. Study your own organisation and figure out what's likely to happen after you take various actions. Consider your options, such as confronting the bully, waiting out the problem, being friendly, obtaining internal assistance, making reports externally, seeking publicity — or leaving.

Draft Minutes of the Whistleblowers Australia Annual General Meeting

Melbourne, Victoria 7 December 2008

1. Meeting opened 10 am.
Chaired by Peter Bennett, President.
Minutes taken by C Kardell, National Secretary.

2. Opening statement Peter Bennett welcomed those present and thanked them for attending the 2008 AGM.

3. The attendees were Peter Bennett, Cynthia Kardell, Wladyslaw Romanowicz, Sandy Hickey, Stacey Higgins, Robina Cosser, Shelley Pezy, John Pezy, Lori O'Keefe, Jean Lennane, Brian Martin, Kim Sawyer, Stan van de Wiel, Peter Bowden, Peter Sandilands, Fred Jevons, Colin Adkins, Brenda Pasamonte, Feliks Perera and Geoff Turner.

4. Apologies were received from Pat Vallence, Catherine Crout-Habel, Vince Neary, Jeannie Berger, Ann Clifton, John Murray, John Wright, Tom Lonsdale, Ross Sutherland, Charles Norville, Mervyn Vogt, Isla Macgregor, Keith Potter, Mary Lander and Christina Schwerin.

5. Previous minutes AGM 2007
Peter Bennett referred the meeting to their copy of the draft minutes, which had been published in the January 2008 edition of *The Whistle* and on the website.

Peter asked if anyone would like to move that the previous minutes be accepted as a true and accurate record. Proposed: Jean Lennane Seconded: Brenda Pasamonte.

5(1). Business arising: Nil

6. Election of office bearers
Peter Bennett, nominee for the position of National President, stood down for Brian Martin to proceed as Chair.

6(1). Position of National President
Peter Bennett, being the only nominee, was elected unopposed and accordingly, resumed the chair.

6(2). Executive positions
The following, being the only nominees were elected unopposed.
National Vice President: Peter Bennett
National Junior Vice President: Jean Lennane
National Junior Vice President: Brian Martin (and International Director)
National Treasurer: Feliks Perera.
National Secretary: Cynthia Kardell
National Director: Greg McMahon.

6(3). National Ordinary Committee Members (6)
The following nominees, being the only nominees were elected unopposed: Geoff Turner (also Director of Communications) (NSW), Stan van de Wiel (Victoria), Shelley Pezy (SA), Toni Hoffman (Queensland), Robina Cosser (Queensland) and Charmaine Kennedy (WA).

Peter congratulated the incoming office bearers on behalf of the Meeting and thanked them for their continuing good work and support of Whistleblowers. He reminded the Meeting that John Pezy and Peter Bowden, as the Branch Presidents of SA and NSW respectively, were automatically a part of the National Committee.

7. Position of Public Officer
Jean Lennane advised the Meeting that Vince Neary, the current Public Officer was willing to continue in the position if required. Peter asked if the meeting would accept his offer.
Agreed: Vince's offer, to be accepted with our thanks.

7(1). Business arising
Jean Lennane tabled the authority to pay the annual lodgement fee to the Dept. of Fair Trading, pursuant to legislative requirements, and asked the meeting to authorise two financial members to sign the application form on it's behalf.
Brian Martin moved a motion to authorise Jean Lennane and Cynthia Kardell so to do. Seconded by Feliks Perera. Carried.

8. Treasurer's Report: Feliks Perera
Peter Bennett tabled a financial statement for the 12 month period ending 30 June 2008, provided by Feliks. (A copy had been made available to the members prior to the meeting.)

Feliks explained we are operating on a surplus due to the unfinancial members paying their arrears, a number of very pleasing donations and the Sydney Conference last year being a success, because it had generated a surplus of $193.10: all of which went to offsetting a general increase in costs like postage.

He thanked Geoff for setting up the Paypal facility on the website, and his suggestion that we change our bank account to an interest bearing account. He checked and the bank said the trade-off was that our account does not attract fees, because we are an association. Geoff said Feliks had misunderstood: he thought we should open an interest bearing account using the majority of the funds and then do the necessary transfers between the accounts on line, because it would provide a much better return even after costs. Feliks said he would follow up on it.

Details of the Annual Statement of Account are as follows.

Income
Subscriptions: $3,955.00
Donations: $305.00
Income over expenditure Sydney Conference: $193.14
Bank interest: $0.97
Sub total income: $4,454.11

Expenses
Whistle production: $2,437.41
Annual return fees: $44.00
Website registration costs: $70.00
Return to NSW Rent costs: $250.00
Sub total expenses: $2801.41

Surplus of Income over Expenditure: $1652.70

Balance sheet as at 30 June 2008
Accumulated fund b/fwd 1 July 2008: $8456.40
Add surplus for year ended 30 June 2008: $1652.70
Total Accumulated Fund at 1 July 2008: $10,109.10

Balance at National Bank: $9609.10
Advance for Conference in Melbourne: $500.00
Total assets: $10,109.10

Peter Bennett called for the Statement of Accounts to be accepted as a true and accurate statement of accounts. Proposed: Jean Lennane. Seconded: Peter Bowden and Stacey Higgins.

9. Reports

9(1). President's report: Peter Bennett

Peter thought he had hit on a decent formula with his first Bulletin, but hadn't sent out the second one after Cynthia told him he should stick to the more personal style of the first issue. Cynthia told the meeting the difference was essentially between his words as against editing and presenting the work of others. He also discussed it with Brian to ensure there was no conflict between the bulletin and *The Whistle* and has decided on the more personal approach. So members could expect a second issue some time soon and, hopefully, one about five times a year.
Peter said there had been some momentous events this year and although he had his reservations about the 'Whistling While They Work' (WWTW) Report, there is no denying it has lifted the profile of whistle-blowing. He has been contacted by a number of overseas organizations, including several in Canada, asking questions and expressing support.

WBA appears to be the only non-government body to have contributed to the WWTW project and attend the Round Table Discussion convened by Senator John Faulkner in Canberra earlier this year when the WWTW report was released: and it has stood us in good stead. WBA will be included in discussions about a Bill of Rights.

He said members might not be aware the publication of the WWTW Report was apparently delayed about seven months after WBA provided what the WWTW Report acknowledges as "critical comment." Peter warned it was a major body of work, even if it wasn't a good body of work, which would be taken into account by the current Legal and Constitutional Affairs (LACA) committee inquiry into whistleblowing protections chaired by Mark Dreyfus QC. He urged members to think ahead and start preparing our response to the LACA Report, which was due in February.

Discussion ensued between Peter, Feliks, Cynthia, Lori, Kim and Peter Bowden about the anticipated LACA report, the WWTW, the presentations yesterday at the Conference by Mark Dreyfus and Bill de Maria, the possible application of a Bill of Rights and a recent decision by the High Court about work related litigation costs, respectively.

9(2). Queensland: Feliks Perera
Feliks reported it was little wonder he was receiving an increasing number of calls for help from allied health personnel and teachers, because the Queensland government had taken so much funding out of health and education. Teachers say they are frightened: they are being bullied and they have no one they can go to with their concerns.

Discussion ensued with Robina reporting that she was experiencing a similar rise in inquiries. Teachers have told her that their internal access to her website about problems within education has been blocked. Both felt there was a need for WBA in Queensland to come together around these issues.

9(3). South Australia: John Pezy
John said most of the inquiries were work related personal grievances rather than public interest disclosures. They tried to give help with advice about how to avoid obvious pitfalls. Sometimes it took hours, because unfortunately, many were looking for a 'white knight' to resolve their problems for them.

Most notable was a public interest disclosure about the underdosing of cancer patients at the Royal Adelaide Hospital. It started in about 2006 with a number of unsuccessful internal disclosures, before the whistleblower made a formal public interest disclosure to Dr Sherbon, SA Health, under the Whistleblower Protection Act 1993 (SA). The whistleblower has been able to remain anonymous and believes that about 5% of the patients treated would have suffered consequences. The whistleblower is very happy with the assistance provided by Cynthia and the SA Branch.

9(4). Victoria: Kim Sawyer
Kim informed the meeting that while he understood Mervyn continued to convene a monthly meeting at Frankston, the Victorian members were effectively more of a network, which for his part was him, Stan, Lori and Keith with the national committee coming together when the need arose. Lori has concentrated on a "bullying" network, she runs. He and Stan have dealt with the other inquiries, most of which have been about issues within the health and university sectors.

Brenda and Col informed the meeting the Frankston meetings would resume February next year. Col attends regularly: he reported attendance varied, mostly six or so, many were not members, topics varied, but mostly they were family law matters. Wladyslaw said he was told only two turned up to the last Melbourne meeting at the Uniting Church.

Kim acknowledged time, distance and technology were playing a part,

but he was concerned that so few people remain committed to WBA, after WBA had helped them to resolve their issues.

Cynthia noted the NSW experience is similar. Attendance at the meetings was strong in the mid 90's, but over time even attendance at the weekly Caring and Sharing meetings has dwindled to a few stalwarts and the Branch has steadily evolved into more of a telephone and email service and support network. She thought it wasn't declining interest so much as a change in the way people wanted to do business. She reminded the meeting that while our constitution provides for a formal State branch structure modelled on the national group, it doesn't require it. So if it is no longer possible or even necessary, then it is perfectly reasonable to operate as a group nationally. Equally where there are branches, they can adapt and take on a form that works for the time that they need to do that. Although it is likely that occasions like the AGM and Conference will probably develop a far greater importance because of it.

9(5). New South Wales: Peter Bowden
Peter told the meeting how the current parliamentary Review of the NSW Protected Disclosures Act 1994 had actually begun in 2006. The parliamentary committee produced a final report, which recommended a separate PIDA in the Ombudsman's Office. It sat on Premier Iemma's desk until earlier this year, when Peter wrote asking why it hadn't been tabled in Parliament. Iemma replied he thought the Act was working satisfactorily!

Gillian Sneddon, an electoral officer had blown the whistle on her boss, the now disgraced MP and convicted paedophile Milton Orkopoulos. The Government treated Ms Sneddon most shamefully.

Barry O'Farrell, Leader of the Opposition, contacted Peter to tell him that when the Opposition pushed for a full parliamentary inquiry into how the Government had treated Gillian Sneddon, the Government used its numbers to dumb down the affair by re-opening the Review. Peter made a submission for WBA in 2006 and did so again, this year when the Review reconvened. Peter said he didn't expect anything new to come out of it.

Peter reported he is making good progress getting whistleblowing taught in every ethics course in our universities, particularly as it now seems to be the 'in' thing. He is doing a chapter on whistleblowing in a book on corporate governance and has set up his own website about whistleblowing ethics, at www.whistleblowingethics.org.au.

9(6). Communications: Geoff Turner
Geoff reported the Paypal facility on our website, which he set up about three years ago, is being used more often. It provides a reliable service and is the least costly of those available. He continues to deal with the email traffic through the website, passing them on to a member of the committee as appropriate, with copies to Cynthia if he can't deal. Most inquiries come from Queensland, Victoria, SA and WA in that order.

The website gets updated from time to time and news of things like the upcoming AGM and annual conference is put up. He recorded the 2007 AGM and the recent hearing of the Federal Inquiry into whistleblowing protections in Sydney and made them available on CD or as a download to members. Geoff had to use his own account, because the WBA site lacked the capacity. Brian also helped out with some space. This is one of the reasons why he is investigating the possibility of moving the website from Suburbia to another host. Suburbia only hosts voluntary and other groups like WBA. It is run by a group of enthusiasts, who we donate about $120 to each year: NSW covers the cost. Also web costs generally have come down. Geoff wants to be able to provide various email facilities and a greater capacity.

Cynthia thanked Geoff on behalf of WBA for donating the cost of renewing the two domain names we hold.

Geoff advised the 2008 AGM and the Conference would be available on CD or as a download at a later date. A small sum payable to WBA is being charged for the CDs. Col indicated he was familiar with burning CDs and is willing to assist: he agreed to contact Geoff to talk about ways of helping out.

Geoff urged members to remember to tell us when they changed their address.

9(7). International Liaison: Brian Martin
Brian reported on the production of *The Whistle*, which was pretty much business as usual: all past issues are posted on his website. But he said he really wanted to talk about the impact various types of information are having. He has written chapters about whistleblowing in books about biological warfare, dissent and the failure of leadership, and corporate crime, but he is not sure that they have much impact, because the audience is too small. Brian thinks the information with the most impact can be identified by how many people find it using search engines: the number of "hits" reflects the impact or usefulness of the information. So, Brian thinks we need to scan the best articles we have, like Jean's about the canary in the mine, and get them onto the net. On his own website the most popular is the article he wrote about defamation and other similar and short informative pieces: not the really detailed long things.

10. Agenda items
There being no formal agenda items, the meeting was opened for other business and general discussion.

11. Other business: AGM 2009

John and Shelley informed the meeting SA would host the AGM next year. Peter thanked them on behalf of the meeting.

Cynthia indicated they needed to take advantage of the January, April and October editions of *The Whistle* to promote the conference. The January issue should just notify the location; but they would need to have settled on a venue, the accommodation and related costs by about mid March, to get it to Brian in time for the April issue. Then as it came together the information could be upgraded over the subsequent two issues. Cynthia would get out a final reminder in November, if need be. Geoff would put the same information on the website. They would need to liaise with Feliks, as all the finances are managed through the WBA account.

Kim reflected in hindsight that they might involve a wider group or the national committee with finding the speakers and look for support from strongly investigative, rather than general journalists and media.

12. Discussion items

12(1). Projects for 2009
Peter Bennett urged the members to get behind a specific project over the next year for maximum impact and growth in 2009. He is keen to maintain the public awareness of WBA. The projects could be directed at NGOs, the private sector and not just government. He suggested we start by writing a series of letters to identify the issue and the problems, to get the ball rolling.

In the ensuing discussion many ideas were floated, with discussion around what was possible, practical and how best to get it up and running. Brian said there were other less direct ways: for example, by supplying the information to allow others to exploit the offending law's weaknesses like he did with defamation. Robina was keen to exploit an upcoming election. Kim said find the pressure points with the media: concentrate on getting leverage, but warned it's best to do a few things well rather than risk our credibility.

Eventually the various ideas crystallised into the following projects. John and Shelley in SA will push the various issues arising out of the recent public interest disclosure about the underdosing of cancer patients. Kim, Stan, Lori and Cynthia will push for a federal False Claims Act. Feliks and Robina will deal with the bullying and payback in education and health in Queensland. Brian and Geoff will pursue internet filtering, time permitting. Peter Bowden will focus on private sector whistleblowing, which would dovetail with a False Claims Act. Cynthia will assist him. Cynthia will coordinate our response to the LACA inquiry and Peter will take on the Bill of Rights issue.

12(2). Bill de Maria on the LACA inquiry
Kim wanted to say he felt he had to apologise for any discomfort anyone might have felt: that while he agreed with Bill on many things, for example that WBA was effectively being managed out of the process, he was critical of Bill for not raising his criticisms directly with Mark Dreyfus during his presentation. He disagreed with Bill that WBA would fail, although his observations about group whistleblowing were interesting and had struck a chord.

Kim like Bill was also concerned about the composition of the Committee and some of the things that Mark Dreyfus did say: that the LACA inquiry would not be recommending a separate PIDA (Public Interest Disclosure Agency) or extending the act to include journalists, like in the 1994 Report. Dreyfus said something like it, meaning the 1994 Report, was all too encompassing and the Committee would not go that far this time. Maybe, next time.

Peter Bennett acknowledged the inclusion of the new back benchers on the Committee could be seen as worrying. But then Dreyfus was new and he seemed to be on top of the job. He sat next to Belinda Neal at the Roundtable Discussion and she asked sensible questions.

Brian asked if Kim could provide the list of the recommendations made by the 1994 Report. Kim indicated he would, and of course, write to thank all of the speakers. Cynthia said she would write to the LACA Committee about some of our concerns before the Report is published in February.

12(3). On line committee meetings
Peter (Bennett) indicated he is interested in exploring whether available technology could be used to facilitate more frequent committee meetings. Brian talked about the Skype and Webcam products and he said he has previously used his current phone to do conferencing calls. Geoff talked about VoIP: a product that also provides ordinary and overseas calls at about 10 cents a call.

12(4). Funding for WBA projects
Peter was aware WBA had always resisted the idea of obtaining a grant, but he wanted to raise it again, based on his experience with the Tyalgum Progress Association, where the association had set its own conditions. Peter (Bowden) made the point that both Tom Devine (GAP Accountability Project) and AJ Brown, director of the WWTW research project, operated on grants. Feliks warned that inevitably government grants came with strings attached. Jean recounted a recent experience in the local push to keep Callan Park in public hands: local NGOs associated with the group told her government had advised that if they wanted recurrent funding they should not support the Friends of Callan Park association. Peter felt this aspect could be managed to our benefit. Subsequent discussion was resolved with the meeting agreeing with the suggestion put up by Peter (Bennett) and supported by Col that there was no objection in principle to investigating the possibility of obtaining a grant, although proceeding with an application would remain subject to the Committee's approval.

12(5). Understanding whistleblowing
Peter (Bennett) stated he thought he had understood what whistleblowing was until recently: it seemed to him to cover wrongdoing, for example breaking a law. Or a practice: again it is wrongdoing. But he felt there were issues with policy decisions made by government. Kim felt systemic problems fall into policy, the third category. Peter (Bowden) agreed, if it included maladministration, whether private or public. Kim reminded us Wayne Berry from Stopline was seeing more and more disclosures about wrong policy from employees. Cynthia suggested we think about it in relation to our Constitution, which in part indicates whistleblowing is done to "eliminate, expose and avert mismanagement, waste, corruption, and/or danger to the general public and/or environment throughout Australia". Peter told the meeting the discussion this topic would have to wait for another time, as we had run out of time.

13. Close of meeting: 4pm
Peter asked the meeting to join with him in thanking Kim, Lori and Stan for a wonderful conference and AGM, Geoff for recording the event and Feliks for handling our finances. He wished us a safe trip home and looked forward to seeing everyone together again in Adelaide 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 (Crypt), 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.

WBA conference and AGM

In December, the WBA conference and AGM were held in the pleasant surroundings of University College, University of Melbourne.

Read about the meetings on pages 13-19 — and join us at the next conference and AGM in Adelaide later this year.

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.

To subscribe to *The Whistle* but not join WBA, 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