

*"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



### Whistleblowers afraid to speak despite new laws

Glenn Kauth

*Law Times*, 19 October 2009

IN a recent documentary, CBC's *The Fifth Estate* highlighted yet more problems with Canada's record on enforcing airport safety rules.

The story stemmed from a student's discovery of a computer memory stick in a coffee shop. On it were warnings from a government security inspector that officials are compromising public safety in favour of "profit and convenience."

But besides shedding light on a safety issue that would disturb most Canadians, the report drew attention to yet another problem in our laws: the lack of adequate protection for whistleblowers who report wrongdoing. That's because the inspector who issued the warnings wouldn't talk about them.

He feared reprisals for what he had done and told reporter Hana Gartner that he knew of other government employees who had suffered badly for coming forward with problems. In the end, he instructed her never to call him again.

His reaction isn't surprising, of course, but it is troublesome given both the gravity of the safety issue at hand as well as the fact that the federal government was supposed to have addressed the reticence of whistleblowers to come forward in the wake of the sponsorship scandal several years ago.

Obviously, changes by the former Liberal government to the Public Servants Disclosure Protection Act and later amendments to it under the Conservatives' Federal Accountability Act aimed at making it easier for bureaucrats to report problems haven't worked.

In assessing the legislation, in fact, the organization FAIR (Federal Accountability Initiative for Reform), includes this warning to government employees on its web site: "Public servants who are considering making a disclosure under the new legislation should first pause and make sure that

they fully understand how it works before they entrust their fate to this deeply flawed process."

Among the problems, according to FAIR, is that the legislation doesn't provide ironclad protection for workers who report wrongdoing. So, if they feel they've suffered retaliation for their actions by a manager, for example, they can make a complaint to the public sector integrity commissioner, Christiane Ouimet.

She may then start an investigation but, FAIR says, procedures for doing so are problematic for three reasons: employees have just 60 days to file a complaint; they have little legal support compared to the government; and they face the onus of proving their problems at work were the result of retaliation. In other countries, laws provide for a reverse onus that requires the employer to show the adverse treatment wasn't due to whistleblowing.

The Conservatives, of course, can justly argue that their Federal Accountability Act brought in useful reforms. But the reaction by the airport security inspector shows government employees are still very fearful of reporting wrongdoing.

Canadians deserve better. That would require changes to our laws, but until the public speaks up, we'll depend on lost memory sticks in coffee shops to find out what's really going on within our government.

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### The value of confidential reporting

Watchkeeper

*BIMCO*, September 2009 and *Marine Engineers Review*, November 2009

WE live in an unforgiving world where the "culture of blame" is well established, legal liabilities abound and the concept of an "honest mistake" has become almost redundant. That is perhaps why a system that enables people to report hazardous incidents in a confidential manner is very valuable indeed.

Confidential hazardous incident reporting has its roots in the aviation industry, where death is more readily evident and the consequences of such an incident can be more severe. The idea of "no-blame" reporting has become quite well-established over the years. A pilot makes a mistake, perhaps turning a control knob clockwise when he ought to have turned it the other way. He realises his mistake, takes the corrective action and disaster is averted. But he realises that if he could make this mistake, others might do so with catastrophic results, and a programme is in place to enable him to report his lapse. It could be that this points to a potentially serious design deficiency, or something that can be easily prevented by a small "tweak" in the design, or additional training. But the mere fact that such a system was available has encouraged its use, and saved lives. The fact that the reporter will not be blamed, or thrown out of his job on account of this lapse, is a further encouragement to use this system.

It is some years since the UK Department for Transport, conscious of the value of such an incident-reporting programme to aviation, decided to fund the establishment of a marine equivalent, the Confidential Hazardous Incident Reporting Programme (CHIRP). It has now been in operation for more than five years and is beginning to make a positive impact on marine safety. Interestingly, although it is a UK initiative, it welcomes reports from ships and seafarers sailing under any flag. It is successfully reaching the leisure boating industry as well as commercial shipping and trying hard, with limited success, to penetrate the fishing industry, where too many deaths and injuries still take place.

It is, of course a wholly voluntary system, and it is individuals who report incidents to its headquarters in Farnborough, in the UK. And while initially attitudes in the shipping industry might have been suspicious of something akin to "whistle-blowing," there has been growing support for CHIRP and encouragement of its aims

in the industry. Good companies have processes for “near-miss” reporting, but experienced people also recognise that the embarrassment of a mistake might prevent an individual reporting an incident. CHIRP encourages openness and a public spirit, through its promise of absolute confidentiality.

CHIRP also takes action to address incidents, in a navigational near-miss, for instance, contacting the owners of the “other ship” to find out what went wrong. In a recent report published by CHIRP about a navigational incident, a range of failures were identified by the company of the ship complained about, and all were being addressed.

Of course, knowing that CHIRP is there and knowing what it does are very important, this being undertaken by regular reports published as CHIRP Feedback several times every year in newsletter form. As a result of this, it has been possible to detect certain trends, and these can be addressed. Some might be obvious, like regular failures to keep a good lookout and poor knowledge of the regulations. Others are more singular, but no less important, such as a cook concerned at the risk of poisoning from food kept in a press in the mess for too long, or equipment failures. CHIRP is proving increasingly useful, as confidence in it grows.

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## **NHS is paying millions to gag whistleblowers**

**Patients’ lives put at risk by tactics used against those who highlight safety fears**

Nina Lakhani

*The Independent on Sunday*

1 November 2009

NHS whistleblowers are routinely gagged in order to cover up dangerous and even dishonest practices that could attract bad publicity and damage a hospital’s reputation. [The NHS is the UK National Health Service.]

Some local NHS bodies are spending millions of taxpayers’ money to pay off and silence whistleblowers with “super gags” to stop them going public with patient safety incidents. Experts warn that patients’ lives are being endangered by the use of intimidatory tactics to force out

whistleblowers and deter other professionals from coming forward.

The IoS (*Independent on Sunday*) has learnt of children in Stoke-on-Trent needlessly losing organs after safety issues highlighted by a senior surgeon — who was suspended after coming forward to voice concerns — were ignored. In one of more than 20 serious incidents, a newborn baby girl needed an ovary removed after a standard procedure to remove a cyst was delayed because of staff shortages.

According to Public Concern at Work (PCaW), two-thirds of all whistleblowing cases settle before reaching court. The details of these claims, including allegations of dangerous practice, dishonesty and misconduct, are never disclosed to the public.

However, judges are also failing the public by agreeing to NHS gagging orders when presiding over whistleblower cases in court. Such orders leave future patients exposed to poor practice, while past ones remain unaware that they may have been a victim, says Dr Peter Wilmschurst, consultant cardiologist at Royal Shrewsbury Hospital.



Peter Wilmschurst

This evidence of widespread gagging comes amid government insistence that whistleblowers are fully protected under the 1998 Public Interest Disclosure Act, which made it illegal for NHS trusts and other public bodies to include confidentiality clauses preventing the disclosure of information that is in the public interest.

Dr Richard Taylor, Independent MP for Wyre Forest and a member of the Health Select Committee which condemned the lack of support for whistleblowers in its recent patient safety inquiry, will this week call for an adjournment debate on the issue. Two “terrified” local doctors have recently approached Dr Taylor after

their concerns about patient safety in the out-of-hours GP service were not taken seriously.

Francesca West, a policy officer at PCaW, which provides legal advice to whistleblowers, said: “Bad employers are using super gags to hush up problems rather than sort them out, and many people feel scared and pushed into accepting these terms. That’s why we are pushing for whistleblowing claims to be made public so we can identify problems and hold employers accountable.”

The introduction of the 1998 Act was hailed as a huge step forward. Yet whistleblowers still risk facing “trumped up” allegations of misconduct, improper behaviour or mental illness if they feel compelled to voice concern. Margaret Haywood, for example, a nurse who filmed undercover to expose shocking care of elderly patients in Sussex, was struck off for breaching patient confidentiality, even though no patient or relative complained. She was reinstated by the High Court last month after widespread public outrage at her dismissal.

According to Peter Gooderham, lecturer in law and bioethics at the University of Manchester Law School, there are too many legal hurdles to jump over for a whistleblower to ensure their full protection. “The legal protection for whistleblowers does not work. The NHS is littered with whistleblowers whose lives have been damaged or destroyed. For protection, the whistleblower must have a reasonable belief in their accuracy, and the disclosure must be made in good faith. A whistleblower may not understand what ‘reasonable belief’ and ‘good faith’ mean, and indeed may not wish to run the risk that a court or tribunal might find against them on these points. I question whether these legal hurdles are necessary where patient care is threatened. A lot of tactics used are too subtle for the law; threats and bullying work for trusts, so they continue to be used.”

The British Medical Association has opened 15 new whistleblowing cases in the past three months, and more than 200 doctors have rung its helpline since July 2009. Around a third of calls to PCaW each year involve workers in health and social

care, many of which take years to resolve.

According to Dr Wilmshurst, one doctor was recently vindicated by a court, five years after raising the alarm about the misconduct of a more senior colleague. The trust agreed to pay compensation and the five years of lost salary on condition the doctor agreed to a gagging clause. The doctor, now broke, exhausted, career in tatters, had no option but to accept the terms, even though it means the public will never find out what happened.

In another case, the IoS has learnt of more than 20 senior doctors and nurses being warned against supporting the claims of a whistleblowing colleague, as this would place them in breach of their employment contract.

Mr Shibban Ahmed (see below), a paediatric surgeon employed by University Hospital of North Staffordshire NHS Trust, has been suspended on full pay since March after raising the alarm about botched operations on children and unnecessary delays in treatment. A senior colleague has told the IoS about a relentless “campaign” by the trust managers to discredit Mr Ahmed among his colleagues.

The trust said it would always encourage staff to raise issues internally first, but has not and would not prevent staff talking to the media or external parties about patient safety concerns or governance issues.

#### **Peter Bousfield: gagged and pushed out**

In 2007 Dr Peter Bousfield, a consultant gynaecologist and former medical director at Aintree Hospitals Trust in Liverpool, felt forced to accept early retirement, with a gagging clause attached, after his concerns about insufficient staffing levels and patient safety at Liverpool Women's NHS Foundation Trust were ignored for years.

Dr Bousfield repeatedly reported delayed operations, overcrowded clinics and inadequate staffing levels to the medical director and chief executive from 2002. He was pushed towards early retirement in 2006, as an allegation of bullying was made against him — though it was not formally investigated.

He was subsequently threatened with a court injunction by lawyers

acting for the trust if he ever took his concerns about patient safety to his MP or the media.

His story came to light when his son, Andrew Bousfield, a non-practising barrister, was referred to the Bar Standards Board by the trust after he tried to represent his father in correspondence.

The trust last night said it was satisfied the terms of the compromise agreement, which included the confidentiality agreement, have not stopped Dr Bousfield raising concerns with the appropriate regulatory bodies.

#### **Shiban Ahmed: denied access**

Shiban Ahmed, 48, a senior paediatric surgeon from Cheshire, joined North Staffordshire NHS Trust's University Hospital in 2007. He raised concerns about poor-quality surgery and delays in treatment with trust management, the health regulator, the GMC and the BMA for months before he was approached by Bill Cash, MP for Stone. Mr Cash had been contacted by the grandparents of Lilianna Brassington, 10, after Mr Ahmed saved her life by diagnosing a “flipped stomach” needing an urgent operation. Her parents, Wendy and Tony, were incensed when she was denied a follow-up appointment last year with Mr Ahmed for eight weeks after the trust withdrew his services. Mr Ahmed had diagnosed her condition after 18 months of worsening health under her previous doctor. Mr Ahmed, who has been suspended since March, is “concerned” at being denied access to the investigator examining his allegations, involving more than 20 children.

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### **Wikileaks website offers promising outlet for fighting corruption**

Author: Manfred Goetzke

Editor: Kate Bowen

27 November 2009

Top secret and restricted access: Government officials have long found ways to conceal documents that might incriminate them. With the Internet platform Wikileaks, insiders can now bring such documents to the public.

Kenya, 2002: The population is tired of the pervasive corruption under then President Daniel arap Moi's government. They elect Mwai Kibaki as president, who appoints John Githongo as the head of a national anti-corruption campaign. But soon after taking office, Githongo realizes the new government is just as corrupt as it was under Moi.



John Githongo

Soon thereafter, Githongo begins secretly recording conversations with government officials that reveal their misconduct. Fearing for his life, Githongo flees to Britain and publishes his information — but not through a traditional news outlet like the BBC. Instead, he uses the Internet site Wikileaks.

Githongo's report has been one of Wikileaks' greatest successes so far, says Daniel Schmitt, who helps oversee the website in Germany. The report had a significant influence on the outcome of 2007's election in Kenya.

“Some estimate that Githongo's information influenced ten to fifteen percent of the votes. News agencies had reported on the information for weeks, and everyone in Kenya was aware of it,” according to Schmitt.

Wikileaks is an Internet platform through which anyone can publish sensitive documents or information. There is just one condition: They must be authentic. Some 1,200 people are currently involved in maintaining the project worldwide. They are united by a desire to fight corruption and prevent governments and companies from illegal conduct.

Fighting corruption has been a central task of the news media for a



long time — but, in today's climate, many media outlets can no longer finance investigative research.

### **Cost-effective resource for journalists**

"Investigative journalism is under serious threat," said Schmitt. Instead, there's more and more superficial reporting, he continued: "Entertainment and pop culture — all of these things that just distract us from what's actually important."

But journalists now have a new, cost-effective source for sensitive information, while informants have a new way to share their information. Citizens who have learned of corruption or illegal conduct now have a place where they can turn, even if they do not know any journalists whom they trust, Schmitt pointed out.

The Wikileaks staff has developed several methods to verify the authenticity of published documents. Computer specialists test the materials to determine whether they have been digitally manipulated. Then the staff contacts experts on the subject that is dealt with in the uploaded documents.

However, Hans Leyendecker, an investigative journalist at Germany's *Sueddeutsche Zeitung*, remains skeptical. "It's a source that you can at least take a look at, but you shouldn't put too much hope in it," he said.

According to Leyendecker, the problem is that a person cannot always determine what has been falsified and what is authentic. "The second issue is that the documents generally just serve as a starting point for more comprehensive research — they don't offer much more than that," he said.

### **A matter of life and death for informants**

Since its inception, 1.2 million documents have been uploaded to the site. The site draws such a high number of informants because they are able to remain anonymous.

Before a document appears on the site, the Wikileaks staff makes sure to upload it from computers in countries with strong freedom of press laws. That means that if someone files a suit against Wikileaks, then they must contend with the expansive freedom of press rights in countries like Sweden or the US. Scientology, the bank Julius

Baer and the Iranian government have already brought cases against Wikileaks — without success.

Even most of the Wikileaks staff remains anonymous. Daniel Schmitt conceals his real name, and he is the only person in Germany affiliated with the project who speaks publicly about his work. Those who help uncover political scandals live in constant danger.

"At the beginning of the year, two of our staff members in Kenya were murdered," he said. "When that happened, I was glad not to have published my name." Schmitt acknowledged that Germany differs in many ways from Kenya. "Still," he added, "it's a question of who you upset and how much they're willing to invest to get rid of the problem."

The Wikileaks staff lives with that sort of danger in order to allow dissident figures in countries without free press to publish their information with relatively little risk to themselves.

Until a few months ago, Schmitt had worked as an IT specialist who set up computer networks for companies. For him, that was a good reason to quit and transition to working for Wikileaks.

"I have never felt so good about what I do as now. When I get up in the morning, I know that I will accomplish something each day that helps someone."

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## **CSIRO scientist to be punished over emissions trading scheme paper**

*The Australian*, 26 November 2009

THE CSIRO will punish one of its scientists after he published a paper on climate change that criticised the Government's emissions trading scheme. It has accused Dr Clive Spash of breaching protocol by releasing the paper before it was vetted by the peak science body.

"These breaches of fundamental CSIRO standards will be dealt with through appropriate line management," CSIRO boss Megan Clark wrote in a letter to Federal Science Minister Kim Carr.

But facing accusations of censorship, it has released the paper officially

— stressing it is not linked to the CSIRO in any way.

Dr Spash accused his employer of gagging him after it refused to formally release his report under the CSIRO banner earlier this month.

The paper, "The Brave New World of Carbon Trading," is critical of cap and trade systems — like the one the Government is introducing — as well as the compensation given to industry.

He recommends a direct tax on carbon.

The CSIRO — which has guidelines restricting its scientists from commenting on public policy — has repeatedly denied suggestions it is censoring criticism of the Government.

"This has never been an issue of gagging or stifling debate on ETS policies," Dr Clark wrote.

"The key issues at play here are the quality of science and how it is communicated.

"CSIRO has a nationally recognised role as a trusted advisor on matters of science and as such it is important that all our staff are able to fulfil their duties in an apolitical, impartial and professional manner."

She said CSIRO had processes in place to ensure its reputation in science and development is maintained.

Dr Clark was critical of Dr Spash's approach to the issue, saying he had not met his responsibilities as a CSIRO scientist.

He will be punished for releasing his paper during a conference in Darwin in October.

Although he released it without mentioning his link to CSIRO, the science body said he was meant to have gotten formal approval.

"His behaviour has been manifestly inconsistent with the expectations and obligations that apply to all CSIRO staff," Dr Clark said in the letter.

The CSIRO, which headhunted the leading scientist, had tried to get Dr Spash to amend the report so it could be published with CSIRO linkage, but he declined to change it.

The unamended report has been tabled in Parliament.

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**Later news** Clive Spash resigned from CSIRO and is going to Europe.

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### Dealing with a “reformed policy”

Robina Cosser

“WE HAVE reformed our policies” sounds so re-assuring. But what does it really mean?

Who controls the process of “reform”?

And who benefits from the “reform”?

1.

In late 2005, under Freedom of Information, I was given a copy of a “record” of an interview with one of my students. The interview concerned a piece of an eraser that — according to this “record” — had been thrown at this student by another student in November 2000. (Please don’t snigger and dismiss this incident as trivial — this sort of fabricated “trivia” can destroy a Queensland teacher’s career.) The “record” of this interview had been secretly placed in my Education Queensland files. This created the false impression that the eraser-throwing situation had been discussed with me during the investigation into my December 2000 Stage 1 Grievance concerning workplace abuse. It was one of many such “records” concerning me that had been hidden on my Education Queensland “Official Records.”

The “record” of this interview had been concealed from me till late 2005. By the time I found the “record” of the interview under Freedom of Information, the student concerned was old enough to go to university.

I did not believe the record.

The student concerned was disabled. I had spent a lot of time helping him individually. I could not believe that this student would make these critical statements concerning me.

I asked the “independent investigator” to interview this student. But the “independent investigator” told me that he was not allowed to interview the student, or any other witnesses. Because “it would be too expensive.”

So, on the evening of 11 February 2006, I phoned the student myself. I read out to him the “record” of the

interview. He told me that he had never had this conversation — or any other such conversation — with the administrator who had made the “record.”

On 15 February 2006 I emailed the Minister for Education Rod Welford, the Queensland Ombudsman, the Director-General of Education Ken Smith, CMC Complaints, the Education Queensland Director of Ethical Conduct John Ryan and an Officer in the Education Queensland Department of Ethical Standards, Peter Edwards. I described my phone conversation with the student named in the “records.” And my conversations with a teacher and a parent named in the hidden “records”, who had also told me that the “records” concerning them seemed to have been fabricated. A principal and a member of the Education Queensland head office staff had earlier told an Infocomm officer that the secret “records” of their conversations seemed to have been fabricated.

I told the minister and these senior Queensland public servants that I was starting to wonder if some of the “records” of conversations that had been hidden on my Education Queensland official records had simply been “made up.”

But in 2009, in the 13 November copy of the *Queensland Teachers’ Journal*, Andrew Knott of Macrossans, the QTU solicitors, writes to advise Queensland classroom teachers that they must not ask student witnesses to make statements. Andrew Knott advises classroom teachers to request that “an appropriate administrative team member” ask the student for a statement.

This 2009 QTU legal advice leaves Queensland classroom teachers even more exposed to workplace abuse. If classroom teachers follow this advice, a school principal could “record” that a child has made a complaint about a teacher, and the teacher would have no way of finding out that the principal’s “record” is totally falsified.

2.

In October 2004 an officer of the Queensland Crime and Misconduct Commission (CMC) told me that the

CMC had been advised by Education Queensland (EQ) that my CMC complaint was being investigated by an “independent investigator.” But I had discovered, using the Education Queensland website, that the “independent investigator” was actually a junior EQ employee. I told the CMC officer that the CMC were being misled. And the CMC officer became very angry with me. She told me repeatedly that I was wrong. So I asked the CMC officer to search for the name of the “independent investigator” on the EQ website. She searched on the Education Queensland website and, of course, found the name. And so the CMC officer had to admit that the CMC had been misled — and that the “independent investigator” was actually a junior employee of Education Queensland.

But on 4 January 2007, Helen Couper, Director, Complaints Services, CMC, wrote to me advising me that the CMC would have no further communication with me. Helen Couper made this decision more than *one year before* the CMC received the 30 January 2008 Education Queensland “Final Outcome Advice” in which Education Queensland again claimed that my CMC complaints had been “independently investigated.”

And so, in 2009, the official Education Queensland and CMC official records again state that my CMC complaints were “independently investigated.” This is not correct.

But in 2009 I can’t tell the CMC officers that they are being misled. Because in 2009 no CMC officer is allowed to speak to me on the phone. And my letters to the CMC are just marked “File away, No Further Action (NFA) in light of 4 Jan 2007 letter advising of no further communication.”

And, in 2009, EQ have removed the names of their head office employees from their public-access website.

So in 2009 a Queensland teacher who is told that their CMC complaint is being “independently investigated” will not be able to discover that they are being misled. And the teacher would be not able to prove to a CMC officer that the Education Queensland

“independent investigator” is actually a junior Education Queensland employee.

In my experience, most Queensland public service “reforms” are designed by the abusers to protect the interests of the abusers.

Robina Cosser is a member of the national committee of Whistleblowers Australia.

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## The mistreatment of whistleblowers

Peter Bowden

WHISTLEBLOWERS are still in danger, veteran journalist Laurie Oakes tells us in a keynote address at a recent press freedom dinner. He is the latest in a long line of observers who point out the damage faced by people who try to bring wrongdoing by their organisations out into the open.

The retribution that whistleblowers face is widely documented. C. Fred Alford and Roberta Johnson give many examples in their studies on whistleblowing. It would also be the conclusion of every member of the national committee of Whistleblowers Australia (WBA). It is certainly my opinion after many years of working closely with whistleblowers.

The finding of the recent study *Whistleblowing in the Australian Public Sector* that “only 22%” are mistreated is a misleading figure. The result is due to the structure of the study, and, in particular, to the questions that were used. It doesn’t give the extent of the mistreatment of people who are exposing wrongdoing by the organisation itself. The mistreatment figure was revised upwards to 30% of whistleblowers when the definition was changed to exclude people who were classifying personal grievances as whistleblowing, but this redefinition still missed the point. Those who suffer mistreatment are those who report a wrongdoing that is against the public interest. Such wrongdoings bring public disapproval on the organisation or on a senior officer. The retaliation rate then is much higher.

Companies, and public sector agencies, hire “hotline” whistleblowing

companies to which employees can report wrongs. They are extremely successful in stopping fraud against the company or agency, with many studies from the big auditing companies being used to confirm their success. Price Waterhouse Cooper’s 2007 survey on economic crime, for instance, based on interviews in over 5,400 companies located in 40 countries, found that whistleblowers reported 43% of fraud identified in companies. It might not be fraud by the company; it could be an officer on the same level reporting, say, misuse of an office computer for personal use, even viewing pornography — or the private use of the company’s vehicles.



Peter Bowden

Companies do not retaliate against these employees — they thank them. They even reward them. The Australian public sector study however, could not distinguish between this type of whistleblowing and that of people reporting wrongdoing by senior staff of the organisation for company or agency benefit.

The public sector study was huge, and a major and valuable addition to knowledge on whistleblower practices. There were eight surveys across the public sector, the largest of which sent out 23,177 questionnaires, to which 7663 public servants from 118 agencies responded. The contributors to the research were from fourteen state and the federal government ombudsman and anti-corruption agencies, along with five universities, led by Griffith University.

Respondents to the large survey were asked whether they had observed in the last two years one or more of some 39 different wrongdoings. They were then asked to select one activity

that they felt had been the most serious.

They were then asked if they had formally reported that activity to any individual or group and to whom. They chose from a list that included unions, a peer support officer, a counselling service or others who could possibly effect action.

Finally the respondent was asked whether he/she was treated badly by management or co-workers. It was this question that showed “only 22%” was mistreated.

There are several reasons why the retribution rate will be higher for whistleblowers reporting organisational wrongdoing that is against the public interest than it will be for the reporting of wrongs against the company

1. The 39 wrongdoings included six personnel and workplace grievances — racial discrimination, harmful working conditions, unfair dismissal, incorrect staff selection procedures, favouritism and bullying. These last two had the second and third highest reported rate of the 39 categories (p. 29). Bullying as a percentage of public employee wrongdoings that were reported is very high (30%). The six together add to over 85% of reports (p. 29). These results confirm the experiences of WBA members who receive many personal grievances each year, all described as whistleblowing. The complainants are very unhappy people, and do receive help from WBA. But they are not whistleblowers. More importantly, it is likely that a person reporting bullying, through any of the several conduits noted above, would not experience retaliation. Imagine you are a union official who receives a complaint about bullying. How are you going to retaliate?

2. When personal grievances are excluded from the results the mistreatment percentage rises — to near 30%. However the six personal grievances are not the only personal complaints that employees make against a senior officer when complaining to WBA. Covering up poor performance is one. It has also an equally high reporting rate at 29.6%. “Acting against policy” or “incompetent or negligent decision making” are others. They could be genuine but are also symptomatic of an employee who

is unhappy with a senior officer, or with his/her employing organisation. If these complaints were separated out, the mistreatment rate would go even higher. In any case, if a staff member complains of these activities to a counselling officer, the counselling officer is unlikely to mistreat the complainant. Or even acquiesce to mistreatment.

3. Two out of five respondents (41%) reported wrongdoing "at or below my level" (p. 66). Such reporting is unlikely to attract retaliation. It is extremely difficult for a person to mistreat a whistleblower who is at a higher organisational level. The whistleblower in any case is arguably not a whistleblower but a manager doing his/her duty. The manager may not even be in a direct line above the wrongdoer. Such a case may arise through the informal social networks that exist in large organisations enabling a more senior officer who learned of a wrongdoing elsewhere in the organisation to report it upwards

4. Case handlers and managers have responded that 48% of employees who report wrongdoing "often or always" experience problems (emotional, social, physical, or financial) and a further 42% state that it is "sometimes" the case (p. 83). These problems are not necessarily mistreatment or retribution, but it is difficult to see how these types of problems could arise, if the whistleblower is treated "well or the same" by co-workers or management. Case handlers and managers involved in a whistleblowing incident would likely see the true picture behind whistleblowing for it is their task to manage such incidents. They would have no reason to exaggerate their responses. The findings that 48% to 90% of whistleblowers experience problems, as observed by people with some formal responsibility for whistleblowing, suggests that the mistreatment of genuine public interest whistleblowers is much higher than the 22–30% that have been stated.

5. Some whistleblowers have changed jobs shortly after their whistleblowing experiences and are therefore unlikely to experience retribution. They may have even left the service and not responded to the questionnaire. The impact of leaving the service on questionnaire responses

will be small, however, as resignation rates are low.

The wrongdoings listed are the same for every organisation that was surveyed. As simple observation tells us however, those in addition to these wrongdoings, virtually all disciplines and professions have additional sector-specific wrongs. Educational institutions have plagiarism, research institutions produce bogus findings, hospitals face a massive number of bio-ethical issues, public enterprises encounter the same range of marketing, advertising, and financial wrongs that are seen in the private sector. An employee that had experienced one of these wrongs may have responded to the questionnaire under a general heading — acting against policy for instance, or wasting funds. But we do not know, throwing some further doubt on the results.

Three other factors could have influenced the responses to the questionnaire and raise additional questions regarding the findings that were reached.

- The survey covered all types of public sector agencies. The Commonwealth has virtually no whistleblower protection, however, so it is possible that the nature of whistleblowing and therefore of retaliation is different in the Commonwealth. People tend to blow the whistle only in areas where they feel relatively safe.

- The report does not correlate the wrongdoing with impact on the reputation of senior officials or the organisation itself. Again drawing on WBA experience, if the whistleblowing accuses a senior official or the whole organisation of a wrongdoing, the retaliation and efforts to cover up are very high.

- The report does not show the percentages of respondents from different agency groups. It is WBA experience that whistleblowing issues arise more frequently in certain types of organisations — universities and other teaching institutes, police enforcement authorities, child welfare agencies for instance. It would have helped to know if the proportion of these institutions in the sample were representative, from which the conclusion could be drawn that the findings are representative. Otherwise there is doubt.

The conclusion can be drawn from the above arguments that the reported figure near 30% of whistleblowers who experience mistreatment is almost certainly understated. If we combine those who are not of public interest with those who reported themselves as whistleblowers when they were not, and unlikely to be retaliated against, then there is a much larger number of genuine public interest whistleblowers who did experience retaliation. Depending on the assumptions this retaliation figure may be as high as 60–80%.

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

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## Response to Peter Bowden

AJ Brown

THE Whistling While They Work project team enjoyed working with you, Peter, as well as others from Whistleblowers Australia in the design, development and piloting of the key instruments in the project. I understand why many people concerned about the consequences of whistleblowing continue to be worried that some of the survey results might understate the frequency and extent of problems experienced by whistleblowers — which range from outright reprisals to failures of support, to all the subjective stresses of dealing with investigative processes and being witness to wrongdoing itself.

In fact most of the issues raised by Peter have been addressed before, and are directly addressed in our analysis. I encourage readers of *The Whistle* to read for themselves, chapters 5, 6 and 9 of *Whistleblowing in the Australian Public Sector* (ANU E-Press, 2008), which are free to download along with the rest of the book from [http://epress.anu.edu.au/whistleblowing\\_citation.html](http://epress.anu.edu.au/whistleblowing_citation.html). It is a limitation of all survey research that the results need to be interpreted in light of the methods used both in data collection and the way a very large body of data is cut in analysis. There is nothing strange about this. Wherever they have been identified, all such issues are addressed in the book.



Some of Peter's reportage of the methods is accurate, some is inaccurate, but readers can judge that for themselves. The main thing is that his main argument is correct, as explained in the book, even if not for the reasons he suggests. From the large survey of public servants, 22 per cent of those categorised for analysis purposes as public interest whistleblowers responded that they considered themselves to have been treated quite badly or very badly by either their co-workers or the management of their organisation as a result. But that is only one part of understanding the impacts of whistleblowing on whistleblowers. On top of that, we make some estimates, not mentioned by Peter, of the higher proportions who suffer varying levels of stress and adverse outcomes, many of them the responsibility of others, which are less easily sourced to active mistreatment. On pages 131–133 we discuss indicators of how many whistleblowers (even those who report being treated well) report the stressful nature of the experience, and count these as impacts which need to be prevented, minimised, managed and compensated for. As we conclude, on this measure the overall proportion of whistleblowers who currently suffer can be estimated to be about 62 per cent.

As also stated in the book, the above results are also very much averages, across a very wide pool of whistleblowing and reporting activity, and a wide pool of organisations. Some of the breadth of the organisation types and sizes involved is further discussed in the draft second report, released in July 2009, available at [www.griffith.edu.au/whistleblowing/](http://www.griffith.edu.au/whistleblowing/).

Chapter 5 makes clear (as do later chapters) that there are huge and, in our view, unacceptable differences between agencies — in some organisations, these figures go much higher than the average results. In some cases, quite similar organisations got very different results. The fact that some agencies are doing much better than you might have believed, helps confirm that the management of the bad ones now have *no* excuse not to lift their game. Exposing a more accurate picture of this state of affairs was a major aim of the research.

Chapter 6 also analyses the risk factors for when mistreatment is more likely, and several of the factors discussed by Peter are included (for example, relative organisational seniority between people involved, which the evidence suggests is indeed a very important factor in what happens — not surprisingly). It is quite clear that you put a couple of those factors together, and the proportion of whistleblowers in that situation who are likely to suffer adverse outcomes goes very high indeed. No attempt has been made to disguise this reality, in fact quite the reverse, which is why this crucial analysis has its own chapter. However there is also evidence that sometimes — against all the odds — people in high-risk situations can still emerge surprisingly okay, or so they said. We need to learn from all the experiences of where things have actually gone comparatively right, or at least much better than you might expect, if we are to set and then implement a higher standard of what governments, organisations and managers must do to deal properly with the reporting of wrongdoing and the protection and support of the people involved.

Of course, there are many situations where even after this effort, organisations or governments will unfortunately continue to fail to protect their people, or where whistleblowers are justified in going public with all the damaging consequences that this can involve for them. In these situations, we need a different range of protections to be strengthened and extended, and a whole new approach to how aggrieved whistleblowers can seek effective compensation for the impacts on their lives and careers. Our book documents the vital importance of these reforms, as well, and you can rest assured that the researchers involved in *Whistling While They Work* will continue to pursue them.

Thanks for the opportunity to comment yet again on these issues — it probably won't be the last time.

A J Brown is Professor of Public Law at Griffith University and project leader, *Whistling While They Work* (2005–2009)

## BOOK REVIEW

### Don't be gagged

Reviewer: Brian Martin

WHAT can whistleblowers learn from legal actions against activists?

Imagine that you are a protester. You write letters to the newspaper criticising a property development. Or you attend meetings of concerned citizens on an environmental campaign. Or you join protest marches and rallies. Or, more dramatically, you take direct action by entering private property to block earth-moving equipment — a form of civil disobedience.

Thousands, indeed hundreds of thousands, of Australians join in such activities every year. Nonviolent activists who are arrested usually know exactly what they are doing and the likely consequences — usually not too severe. However, a few protesters, very unlucky ones, are unexpectedly sued by companies and spend years with court cases hanging over their heads.

In the early 1990s, many people in Adelaide joined protests against the building of a bridge to Hindmarsh Island. There were environmental concerns and, more importantly, the bridge was opposed by local Aboriginal women. The owners of a marina on the island, the Chapmans, started suing opponents of the bridge for defamation. They initiated dozens of legal actions, suing individuals, environment groups and media organisations.



Hindmarsh Island bridge

What do you do if you've been sued for speaking out on a social or environmental issue? You might make an apology and pay up, but that's

expensive and it means that you've left other campaigners in the lurch. In fact, if everyone folds up, protest is hardly possible: it will be inhibited by fear of lawsuits.

Another option is to fight the case. That's also expensive. You might end up paying tens of thousands of dollars, with no guarantee of success. If you lose, you might have to pay the opponent's legal costs too. And it's a slow process, lasting months or years. Meanwhile, the protest campaign is bogged down, with more concern about defending court cases than addressing the issues.

A more creative option is to use the court cases as a way of attracting greater attention to the issue. That's what happened when MacDonald's sued Helen Steel and Dave Morris for producing a leaflet titled "What's wrong with MacDonald's?" that discussed health shortcomings of MacDonald's food, poor pay for workers and the environmental impacts of beef production. The ensuing court case was the longest in British history and helped stimulate a massive campaign that was a public relations disaster for MacDonald's. It sounds great, but it meant Steel and Morris put their lives on hold for a decade.

In Australia, if you are a protester and you are sued, who do you call? Greg Ogle. He was heavily involved in the Hindmarsh Island legal actions. He's not a lawyer, but he's learned an incredible amount about the legal system — he calls himself a bush lawyer. He's an experienced activist. And he's highly experienced in dealing with legal actions against activists.

The Hindmarsh Island legal dramas went on for years. After that, Ogle became involved in advising members of Animal Liberation in South Australia. Some of them had entered a farmer's property, taken photos of his battery chicken operation and used the event to publicise potential violations of animal welfare laws. Animal Liberation believed that what the farmer was doing was illegal, but he never would have been prosecuted except for the activist raid. But entering the property was illegal — the farmer sued. Ogle wasn't in on the raid, but he became involved in the subsequent legal manoeuvres and campaigning.

Then there was the Gunns case. Gunns, a huge forestry company in Tasmania, sued 20 individuals and groups — forest activists and critics — for damaging its business. This was a frontal attack on the right to protest. Some of the activists had taken direct action, but others had only done the usual things taken for granted in a liberal democracy such as writing letters and making submissions. They were also charged with conspiracy, so that those who had only done apparently legal things were held responsible for the illegal activities of some activists. But those illegal activities were fairly standard, such as squatting in trees to prevent logging operations. All of a sudden, conventional protest methods were being met by a legal action with a claim for millions of dollars and the potential to bankrupt individuals.

One of the organisations sued by Gunns was The Wilderness Society (TWS), one of Australia's largest and most active environmental groups. TWS called on Ogle to be the legal coordinator for the Gunns case. As a result, he has an unequalled understanding of the legal and public dimensions of lawsuits against protesters.

Unfortunately, Ogle was completely exhausted by these cases, at times working himself to a frazzle physically and emotionally. So he might not be keen to tackle yet another case. But you can learn much of what he has to offer through his book *Gagged*. He goes systematically through the Hindmarsh Island, Animal Liberation and Gunns cases, giving the background politics, telling about the cases themselves, highlighting the opportunities for using the cases for campaigning advantage and pointing to problems.

The Animal Liberation case worked out best for the activists, who were able to use stunts to turn the legal steps into media events or just having fun. For example, a protester in a chicken suit served a counterclaim on one of the farmer's lawyers.

Ralph Hahnheuser, the campaigner behind the original raid, prepared T-shirts with provocative messages, triggering a separate set of legal activities that aided the protesters — and he wore one of the T-shirts into the courtroom. The case was exhausting

but it wasn't all that much of a diversion from Animal Liberation's goals: the creative protesters were often able to make the legal terrain serve as a campaigning opportunity.



Ralph Hahnheuser

There were fewer bright sides to the Hindmarsh Island saga. The defamation actions came so thick and fast that most protesters were frightened and intimidated. One difference was that protest against the Hindmarsh Island bridge was more broad-based; many who were involved were better described as concerned citizens than experienced activists, and they potentially had a lot to lose without the same level of prior commitment. The defamation actions were devastating for the campaign. It was only through the combined efforts of the defendants, Ogle and a number of supportive lawyers that the SA environmental movement survived as well as it did.

In the Gunns case, TWS was most happy to campaign, using the legal actions as an opportunity to raise concern about Gunns generally. This worked best internationally: the Gunns suit was seen as outrageous and led to a great increase in attention and activism against Gunns in several other countries. Within Australia, the outcome was more mixed, because the campaigning had to be offset by the fatiguing effort to address the legal dimensions.

Ogle was frustrated by the interaction with some of the many lawyers supporting the Gunns 20 defendants. The lawyers favoured a legally oriented strategy, often at odds with an activist preference for using the case as a base for campaigning.

Back in the 1980s, US scholars Penelope Canan and George Pring studied hundreds of legal cases in which businesses or other bodies sued citizens who had protested against abuses, developments and the like.

They called these cases SLAPPs: Strategic Lawsuits Against Public Participation. The acronym SLAPP caught on and has been a useful conceptual tool for opposing this sort of anti-democratic legal tactic. In the US, most of the activity threatened by SLAPPs is protected by the first amendment to the constitution, not via its guarantee of free speech but by a lesser-known part of the first amendment, the right to petition the government. However, in Australia there is no equivalent to the first amendment, which means legal challenges to SLAPPs are more difficult.

Ogle hasn't given the full story of the legal cases in which he was involved, but instead a simplified version, leaving out many of the tortuous legal arguments, motions, delays, debates and deceptions. Even so, the story he tells will be more than complex enough for most readers, thus giving a good sense of the labyrinthine pathways of the legal system — something that most people, if they knew what was involved, would prefer to avoid if at all possible. It is all the more impressive that Ogle has shown how to enter this hall of mirrors while still keeping the political core of the issue in view.

What is the solution? Are legal actions a guaranteed way to destroy the morale of activists? Ogle has shown one way of countering SLAPPs: design a legal-political response that highlights the original issue — the Hindmarsh Island bridge, battery farming or the destruction of old-growth forest — and use the legal actions to generate greater concern.

Within this overall strategy, Ogle has several general recommendations. One is to speak out and not succumb to lawyers' pressure to keep the case solely in the legal arena. Many defendants are worried that commenting on the issues might jeopardise the case or transgress some legal rule like *sub judice* (often invoked by politicians to avoid commenting on an issue). Ogle insists on keeping the political or social objective foremost; this usually dictates speaking out rather than keeping quiet.

Ogle recommends countersuing. Activists often like to maintain the moral high ground by being only the targets of legal actions, not the initia-

tors. I have long had this view. Ogle has convinced me to reconsider: once in court, he argues, the moral high ground isn't worth much. He thinks it's powerful to countersue; it puts the other side on the defensive. This issue deserves more debate.

*Gagged* is testimony to the incredible emotional and personal cost in defending against SLAPPs, not to mention cost in time and money. Gunns ended up with a serious loss of reputation internationally, but the toll on the defendants was enormous. Is there any way around this? Ogle argues for law reform, in particular for anti-SLAPP legislation. This would be nice, undoubtedly, but where is the political will to implement it? Given that decades of law reform efforts on behalf of free speech have yielded very little in actual changes in the law, the prospect of anti-SLAPP legislation becoming a priority seems remote. Ogle notes that the one example of such Australian legislation, the ACT's *Protection of Public Participation Act 2008*, doesn't do much for defendants: it is mainly symbolic.

Greg Ogle's website, <http://users.senet.com.au/~gregogle/>, is titled "The bush lawyer's guide to avoiding and surviving litigation against public participation." It states "This website is authorised by Greg Ogle on behalf of Bush Lawyers Ink, a not for profit legal service brought to you by the legal system's inability to protect the community's right and ability to participate in public debate and protest."

### What to do?

Ogle is so close to the issues that it is quite an achievement that he has been able to make sense of the incredibly complex legal dramas. Even so, whistleblowers may not see his take-home messages all that clearly, aside from pushing for law reform. Therefore let me suggest some implications.

When you are sued for speaking out, what usually happens is that the focus and forum change. You intend, in speaking out, to draw attention to a problem: corruption, abuse, environmental damage or whatever. Your focus is the problem and your forum is discussion, either inside an organisation or among the wider public. When you are sued, the focus changes to the

alleged illegality of what you said or did and the forum changes to the legal system.

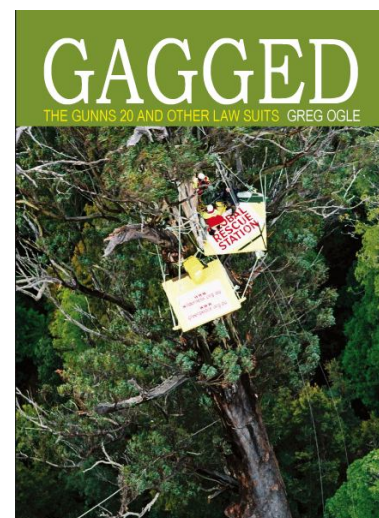
The challenge for anyone who speaks out is to maintain the focus. Rather than getting sucked into an exclusively legal defence, as lawyers often recommend, Ogle shows how it is possible to continue campaigning, including by using steps in the legal process as campaigning tools.

Ogle's recommendation to countersue is one way to keep the focus on the original problem, typically the activities of whoever is suing. In other words, choose legal manoeuvres according to campaigning goals.

In campaigning, a key task is to maintain unity of those involved. When under legal attack, maintaining unity becomes more difficult due to increased fear and risks. Therefore, extra effort needs to be made to cement connections with allies and supporters. For whistleblowers, that means trying to find others who will speak out and spending time with and giving consideration for family, friends, co-workers and other supporters.

Ogle shows that it is possible to become an effective legal advocate without formal legal training. But it's not easy. The knowledge of how to survive and use the legal system needs to be explained for non-experts, with plenty of examples. And we need many more Ogles to help out when the going gets tough.

Greg Ogle, *Gagged: the Gunns 20 and other law suits* (Sydney: Envirobook, 2009).





### Whistleblowers Australia 2009 National Conference

**“Blowing the whistle  
in the workplace”**

Saturday 5 December  
Aquinas College, North Adelaide,  
South Australia

Notes by Brian Martin

*This is a personal summary of points raised at the conference. The speakers and questioners have not checked the account here.*

*All photos by John Pezy*

Shelley and John Pezy, from the South Australian branch of Whistleblowers Australia, were the lead organisers of the conference and AGM. The venue, Aquinas College, is a Catholic residence for students at the University of Adelaide. Visitors from other parts of the country were able to board at the college and walk down the corridor to the conference room, a pleasant venue with views of nearby buildings and parks.

The conference was run as a series of talks followed by questions and discussion.

**Janet Giles**, secretary of South Australia Unions, began by telling a story about her recent trip to Italy — her husband is from southern Italy. They saw on television a security camera video showing a killing in Naples by the Camorra, the Naples version of the Italian mafia. The killing was bad enough, but what was even more striking was that other people at the shop didn't seek to assist or call the police, but simply walked over the body on the way out. The Camorra is so threatening that most citizens dare not do anything openly, though they might make an anonymous report. This is an extreme example but is nonetheless analogous to the situation in Australia in which most people are afraid to speak out about abuses at work.

Janet continued by describing the usual consequences for whistleblowers. She gave a detailed account of a worker who confidentially raised

issues with management. The worker was identified, slandered, harassed, and so on. Management tried to prevent a union representative accompanying the worker to an interview. The worker didn't use the SA whistleblowing legislation, because it was too slow and weak. The worker wanted the initial issues to be addressed, but the main game was management's aggressive attack on the worker's credibility and livelihood.



Janet Giles

Janet described some of the recommendations of the research study “Whistling While They Work.” She argued for improvements in the law and in organisational culture. She pointed to power inequalities as a central issue: workers need to be empowered in order to be confident enough to speak out. But the high proportion of casual workers means that fear of loss of work is an everyday reality for many. A culture supportive of whistleblowers will lead to more honest and productive workplaces.

#### Questions and comments

**Peter Bennett** — a long-time unionist himself — asked how often unions promoted issues concerning whistleblowing. Janet acknowledged that unions haven't dealt with whistleblowers as much as they might have, primarily because unions are oriented to collective action whereas whistleblowing is more commonly an individual matter. The challenge is to come up with collective ways of

dealing with the issues raised by whistleblowers.

**John Murray** asked what would happen when people blow the whistle on corrupt activities within unions. Janet said union corruption was deplorable. The union movement as a whole does not support such activities and it is not the culture of the movement.

**Jo Holland** commented that the decision by the worker not to use the SA whistleblower law reflected the difficulties of formal channels. Janet said that the first step was conciliation, followed by arbitration. The main obstacle was not cost but rather the lengthy time involved and the complex process. The act itself is excellent but it has hardly been used, and many people don't even know it exists.

**Ted Regan** asked how to go about changing the culture. Janet said the “Whistling While They Work” project and other bodies have described how to go about it. But strong supportive signals need to come from management and governments. So pressure is needed from WBA and others. SA does not have an anti-corruption commission — evidence is mixed about how effective such commissions are.

**Frances Scholtz** asked how you measure change in organisations. Janet said one way is assessing workers' feelings.

**Feliks Perera** commented that young people are not given information about what to do when faced by corruption. Janet said this should be embedded in education and training.

**Cynthia Kardell** asked about workers' compensation: a problem is that when you make a claim, you open yourself to the employer seeking all sorts of information about you that can be used to discredit you, so it might be better for whistleblowers to use other forms of leave (sick leave, annual leave) and postpone making a compensation claim, thereby empowering workers by keeping them more in control of the process. Janet said unions have to support workers' compensation systems as a safety net, but the system is slow, complex and litigious — so many workers are more

damaged by the system than by their workplace experience — and there's a need to explore other avenues. Cynthia commented that compensation cases don't address the original workplace issue and that unions have an important role in alerting workers to the disadvantages of going the compensation road.

*Matthew Bazeley* said that in some ways he wished that the SA whistleblower law didn't exist, because it gave him a false sense of confidence. He's not convinced that the law is as good as it could be. Janet repeated her point that the laws need to be assessed for how effective they are.

*Peter Bennett* said WBA would be inviting union representatives to future conferences. Janet said WBA needs to interact with unions at all levels, including the rank and file. Peter then asked whether state governments would relinquish some control if there were a federal whistleblower law. Janet saw there were no barriers from the point of view of unions. The question was the strategy to bring about change.

*Cynthia Kardell* asked about secrecy: every whistleblower law in Australia assumes whistleblowers want confidentiality in exchange for protection, though in reality the bargain isn't kept. She argued for a different approach: workers go public and the legislation supports them as public whistleblowers. Janet agreed. Collective support isn't easy to generate when the issue is confidential. On paper, confidentiality looks right but in practice it can make things more difficult for the vulnerable person.

*Karen Smith* described her mistake: she signed a settlement with a gag clause. She trusted the employers to do things in the settlement; when they didn't happen, she no longer felt bound by the clause. She was let down by her union: Karen was advised to change her correct statement. Her conclusion is that there's better protection from going public.

**David Winderlich**, an independent member of the SA parliament, commented on two key supports for democracy: whistleblowing and freedom of information. He moved an amendment to the SA whistleblower law firstly to expand the scope of the

act (namely the issues on which whistleblowing is protected), secondly to broaden the range of people covered by the act, and thirdly to enable whistleblowers to go to the media. After taking this initiative, lots of people, mainly from local government, have come to him with stories of corruption. He guesses that corporation employees haven't come to him because they are more afraid, whereas local government bodies are more open.

David described recent SA legislation, designed for dealing with organised crime, that has draconian provisions that enable government officials to seize property, keep information confidential and deny licences. These laws are a threat to democracy.



David Winderlich

He said that the complexity of issues facing government is a problem, for example differences in views by scientists about contentious topics. Some scientists may be afraid to voice their views, and they need to be able to speak out so that the issues can be properly debated. Tools are needed to bring information to the public domain.

Many leaders are impatient with democracy. They want to get things done — or, to use other words, to get deals done — without bothering with public debate or scrutiny. When elites give up on democratic ideals, then the system is in jeopardy.

David described the bodies set up for dealing with disclosures as either muzzled or blinkered. To deal with problems, honesty and bravery are needed, but these attributes are in short supply.

In SA, local sentiment supports setting up an anti-corruption commission. The main opponents are the state government and the local government association. The support for such a

commission reflects popular concern about corruption.

David suggested having a whistleblowers week. He also said we need our own Australian stories about courageous individuals, along the lines of the Hollywood films telling the stories of *Erin Brockovich* (portrayed by Julia Roberts), *Karen Silkwood* (portrayed by Meryl Streep in *Silkwood*) and Jeffrey Wigand (the tobacco company whistleblower portrayed by Russell Crowe in *The Insider*).

### Questions and comments

*Cynthia Kardell* recommended the US False Claims Act that allows individuals to make claims about corruption involving the government. The act involves punitive damages against violators and rewards whistleblowers. David commented that the US act would have been introduced by a reformist government when the conditions were right — but there's no such government in Australia today. The other option is to tack it onto other legislation. But it's very hard to promote significant reforms. Cynthia said that the money angle in the US is crucial: governments recoup a lot of money from corrupt corporations. David is willing to have a look.

*Ted Regan* said there's a need for some means to deal with accessories to corrupt conduct.

*Paddy Dewan* raised the issue of natural justice. Codes of conduct have been used against him in pursuing consumer protection. There's a need for an independent view of a conflict and for a natural-justice balance sheet. David said no, there's a need instead for a partisan group to support whistleblowers — namely Whistleblowers Australia. Natural justice and the public interest need to be balanced.

*Julie Wilson* said the police complaints authority is a toothless tiger, based on her experience after the murder of her son. What is the answer? David said there are different ways to deal with problems in the police. If SA had an anti-corruption commission, there would be a need to think through its relation to other agencies.

*Greg McMahan* said that in advancing an anti-corruption commission, he is advocating another sword (a metaphor for dealing with the problem



in the organisation), but what's needed is a stronger shield for whistleblowers. *Peter Bennett* said that if protection were stronger, more people would be willing to speak out.

**Paddy Dewan**, a paediatric surgeon from Melbourne, said normally nobody understands what he's talking about, so he appreciates talking with whistleblowers, who actually *will* understand.

There are two types of sham review. The first is flawed, designed to cover something up. The second is designed to discredit an individual.

He doesn't see himself as a whistleblower but rather as someone who saw a few adverse outcomes and wanted to raise awareness about them. In this talk, he wants to talk about what he has learned from his experiences.

His story has been in *The Age*.



Paddy Dewan

A famous case of sham review involved Ignac Semmelweis, who in the 1800s pointed out that if doctors washed their hands before delivering babies, the death rate of mothers dramatically declined. He was condemned by colleagues and died in an insane asylum. Paddy then referred to a number of contemporary cases of workers who had been victimised for speaking out about problems in the medical system. Whistleblowers can be doctors, nurses or administrators. In

all cases, the whistleblowers were targeted.

When he proposed a better approach for pain relief at Royal Children's Hospital in Western Australia, he suffered reprisals. Following the death of a transplant patient in 2002, Paddy made a report to the hospital board, leading to an investigation (the sham review). The upshot was that he lost his job.

He then described, in some detail, several inquiries that targeted him personally. All sorts of dubious procedures were used, such as the use of unsupported allegations, charges of doing things that should be considered proper, and claims without evidence. He gave lots of detail about allegations and methods. Whether he will be able to continue to practise medicine remains to be determined. Not incidentally, since the 1990s he has spent a total of three years in Third World countries where he has performed over 2000 paediatric surgical operations.

#### Questions and comments

*Brian Holden* said that in NSW there is a lack of leadership in the health system. Paddy said that professional associations should learn about whistleblowing and sham reviews. WBA should be helping the process.

*Feliks Perera* said that what happened to Paddy seemed to contradict procedural fairness (another term for natural justice). Paddy said that he could only see the things coming at him, so it was hard to see the procedural unfairness. *Feliks* said that if there's no procedural fairness, all findings from inquiries should be set aside. Paddy said that he's had a lot of support, but some surgeons have very fragile egos.

*Peter Bennett* asked whether it would be possible to injunct the process (referral to the medical board) until procedural fairness is ensured. Paddy wasn't aware of that as a potential solution — he appreciates the opportunity to learn from WBA. Paddy says he wants to change the system for everyone. *Peter* countered with the argument that Paddy needs to survive himself, otherwise his influence will be far less outside the system.

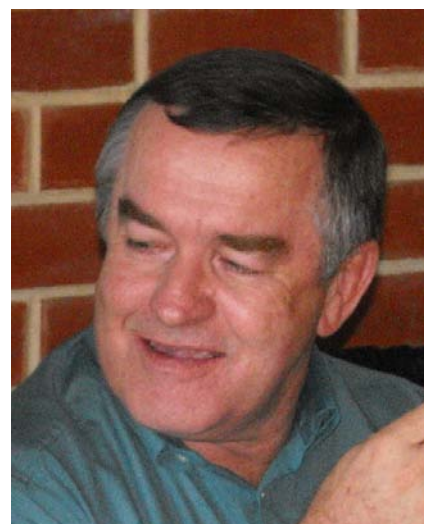
*Sue Berry* asked whether others who were ethical had encountered difficul-

ties. Paddy described a conversation with a colleague who was terrified of taking action — or anyone even knowing about the conversation.

**Greg McMahon**, WBA National Director, went through his lengthy analysis of the "Whistling While They Work" (WWTW) project. He said the report of this study has many useful parts, but it has deficiencies.

He pointed out that the steering committee of the project was made up of representatives of watchdog agencies, with only one exception, Transparency International. That's one problem, because of the shortcomings of many of the watchdogs in relation to whistleblowers, including in some cases acting against whistleblowers. Greg unfavourably compared the WWTW project with Bill De Maria's earlier whistleblower study.

Greg presented diagrams of two ways organisations could be affected by corruption: ad hoc corruption, which involves only a few low-level staff, and systemic corruption, in which many higher-level personnel are involved. Greg thinks the results of the WWTW study are compatible with systemic corruption, but the study report hardly discusses this sort of corruption. The WWTW study recommends reporting corruption, but this is unwise if wrongdoers fill many senior positions.



Greg McMahon

Greg said that the WWTW team did not consult sufficiently with whistleblowers. That, combined with the deficiencies of the WWTW study, led

Greg to recommend that WBA should adopt a formal response to the WWTW project.

### Questions and comments

*Glynne Sutcliffe* said the cultural problem behind corruption meant that problems need to be addressed in the education system to bring up a new generation of better citizens. Greg said that the problem was not so much dishonesty as fear of the consequences.

*Ted Regan* said that many dishonest managers were previously bullies in the schoolyard. Greg said that the problem was that good workers left dysfunctional workplaces, leading to mediocrity. Greg disagreed that the problem was cultural: he said the problem was bad legislation and agencies.

*Peter Bennett* said that in many cases people at the top would be willing to fix problems, but they don't know about them because access to information is blocked by middle management. We should be trying to deal with the people who knowingly break rules, not those who are unaware; we shouldn't say the problem is always with management. Greg said that WWTW should have looked at the full range of problems, including organisations that rely on questionable practices — and that includes watchdog agencies themselves, for example when they refer complaints back to agencies.

*Robina Cosser* returned to Glynne's point about how society has become the way it is. She questioned the system of public service promotions and its link to a problematic culture.

**Judith Merari-Lyons**, a clinical social worker from Queensland, spoke about how to be a whistleblower and keep your job.

Judith gave two case studies. Mary speaks out about paedophilia; the managers take it seriously, stamp out the problem and Mary is congratulated. Mary's story is fictional. Judith has never heard of a case like it. The other case study involves George, who speaks out about paedophilia. George suffers enormously from reprisals, gets no support from management or agencies. He receives death threats. He becomes the subject of investigation, especially his mental state. His files

are tampered with. He is followed home every day. His work is monitored. Colleagues whisper about him and make complaints about him. And on and on. Judith has met lots of Georges.

Judith has blown the whistle three times. She says it is important to understand personality types and workplace cultures that whistleblowers may come up against.

A key personality type is the psychopath (a person with antisocial personality disorder), who disregards the rights of others (they essentially lack a conscience). She recommends John Clarke's book *The Pocket Psycho* and Paul Babiak and Robert Hare's book *Snakes in Suits*. We have to learn how to work with psychopaths and to deal with them.

Another key personality type is the narcissist, who has grandiose view of themselves, who can make your life miserable if you offend them. Then there are lazy, incompetent and uninterested people, and finally there is organised crime.

When you blow the whistle, you are likely to experience excessive stress, with associated behavioural and psychological symptoms, including long-term health problems. What you need to survive is called resilience, the capacity to handle stress and adopt helpful coping strategies.



Judith Merari-Lyons

Judith has worked with many vulnerable children and many murder cases, and so has become familiar with both personal tragedies and the need to develop personal capacities for survival. She pointed to the needs of partners (spouses), whose support is

crucially important and who need to be able to cope too.

Whistleblowers need to know a lot. There are numerous options and agencies. Likewise, there are many sources of support, from families, unions, counsellors and self-help such as through meditation or exercise.

While in the workplace, there are lots of things to know: keeping records, recording discussions, logging events, choosing when and how to fight, and assessing risks to personal safety.

Finally, Judith discussed the mental practice called mindfulness, which can reduce stress and provide a calmer perspective on one's life situation. On request, Judith led everyone through a mindfulness exercise.

### Question and comments

*Frances Scholtz* asked whether some government departments work better than others. Some have terrible reputations — including some in health. Judith said that certain personality types are attracted to particular types of organisations, and some are attracted to high-level positions, often for self-interest.

*Feliks Perera* noted that Judith had a lot of prior learning and so was better able to cope than whistleblowers who are completely overwhelmed by things they did not anticipate. Judith agreed. She tries to help others who don't have the same coping skills. She always leaves the decisions to the person, rather than tell them what to do or not to do.

*Glynne Sutcliffe* said that the role of personality factors was small compared to the nature of the institution, which — according to the Philip Zimbardo prison simulation study — determines people's behaviour. Judith said she knew about Zimbardo's study, but nonetheless it's important to understand personality types, including to understand how any of us can, due to circumstances, start behaving in nasty ways. Glynne also said that it might be better to get rid of government bodies and move to a market system, to minimise the damage in bureaucratic systems. Judith said there are certainly problems with government bodies, but private enterprise has its own share of pathological behaviours.

*Sue Berry* told about the value of the film *North Country*, which helped her children understand what she was going through. Her question: is there a time when the danger subsides and you can relax? Judith said it depends. It may take a long time — in one of Judith's cases it took ten years before she felt safe.

*John Murray* said that many lawyers fitted the definition of psychopathy. Judith said that there are also lots of very good lawyers, some of whom have helped her enormously.

*Julie Wilson* described a mental technique that helped her deal with a phalanx of police officers and lawyers at a coronial inquiry: imagine them in their underpants. Judith agreed that humour is a powerful tool.

**Peter Bennett**, president of Whistleblowers Australia, gave an update on the national situation. He began by commenting on the abysmal state of Australian criminal law in relation to the case of Allan Kessing, who was convicted for something he claimed he didn't do but not even charged for something illegal he admitted; the latter involved a politician.

Peter commented on the role of honest belief in making disclosures. In a discussion involving Glynne and Greg, the point was made that if a person has an honest belief, then the issues raised should be the focus of attention — not the person making the claims. Robina said that some unions are not supportive of whistleblowers, because they treat the issue as a dispute between members.

Peter commented on the continuing increase in attention to whistleblowing, including via media coverage. He said there's a huge rush to develop new legislation about whistleblowing, but it is not to protect whistleblowers but rather to manage the information being disclosed, often in a way that doesn't serve the public interest.

Peter said one of the key problems is that government agencies operate in silos, namely non-interacting organisations or segments of organisations, so that information and insights are not shared. He used the example of Customs to illustrate how different agencies are responsible for different categories of imported goods, hindering effective enforcement. Julie

provided a supporting example of police not sharing information across boundaries.



Peter Bennett

Peter emphasised that half of problems in organisations could be fixed by listening to whistleblowers. If whistleblowers could go to the media, the problems would become political issues and there would be greater pressure to fix the problems. Karen said she has been going to the media since 2005, so she is perplexed by staff who say that you can be dismissed for going to the media; actually, she was dismissed in 2009 on a technicality involving documents given to the media. Her point is that there can be problems in the media too, but certainly she was able to survive for four years after going to the media, because the evidence she provided was too strong.

Greg commented on how most of the Queensland media have not reported anything on the Heiner affair in recent years, even when the head of the NSW Independent Commission Against Corruption went to Queensland and commented on Heiner. Greg's point is that the media won't cover every issue.

Peter says that politicians keep passing laws that say certain actions are prohibited, but they don't accompany the laws with penalties for actually taking the prohibited actions. It seems that the laws are not intended to work — they just give the appearance that politicians are addressing the issues.

Peter told a story that gave a perspective on bringing about change. There are problems and problems and problems. An individual can address problem 1 and problem 2 and so on but there's a limit. All you can really do is what you can and then let others carry the baton in future.

Robina says that often it's a waste of time to make submissions — it's just playing to the government's tune. Peter disagreed, arguing that some submissions make a difference for agencies bereft of ideas, and that it's worthwhile contributing wherever you can.

Peter concluded by saying that Whistleblowers Australia is a small voluntary organisation and can only do so much. We can make a difference but we shouldn't expect to make things perfect. We do what we can.

*Shari Allison* introduced herself. She manages the Internal Witness Support Unit in the NSW Police Force. It doesn't use the term whistleblower but that's what's involved. The unit provides support to all members in the service. The unit gives lectures and tutorials for new recruits. When individuals encounter difficulties, the unit can provide individual guidance and assistance, either informally or through formal reporting processes.

There was a discussion about whether WBA should be trying to obtain funding. Glynne said \$250,000 per year could be used to pay a journalist and a lawyer to pursue specific tasks. Sue pointed out that paying a coordinator can be counter-productive, by centralising power and giving the appearance of action without a solid base. The issue of WBA funding is long-standing, having been debated for years — and no doubt will be debated further in the future.





# Draft Minutes of the Whistleblowers Australia Annual General Meeting

Adelaide, South Australia  
6 December 2009

## 1. Meeting opened 9.15am

Meeting chaired by Peter Bennett, president.

Minutes taken by Cynthia Kardell, secretary.

## 2. Welcome & opening address

Peter Bennett welcomed everyone & urged us all to stop thinking about Adelaide being a long way away. The airfares, paid in advance, were not much different to those to other capital cities. The venue was a 5 minutes walk from historic North Adelaide; yet it was really lovely and quiet.

3. **The attendees** were Peter Bennett, Cynthia Kardell, Feliks Perera, Robina Cosser, Alan Basket, Bernadette Finnerty, Peter Sandilands, Judith Merari-Lyons, Karen Smith, Brenda Pasamonte, Stan van de Wiel, Brian Holden, Jean Lennane, Stan Pezy, Shelley Pezy, Greg McMahon, Brian Martin, Jim Regan, Ted Regan, Gerry Dempsey, John Murray and Mathew Bazeley.

4. **Apologies** were received from Geoff Turner, Vince Neary, Bob Steele, Ross Sullivan, Peter Bowden, Kim Sawyer, Toni Hoffman, Charmaine Kennedy, Shane Carroll, Col Adkins, Lori O'Keefe, Catherine Crout Habel, Keith Potter, Mary Lander and SA members of parliament John Dawkins, Ivan Venning, Jennifer Rankine, John Hill, Adrian Pederick, Michelle Lensink, Cory Bernadi and Mick Xenophon.

## 5. Previous minutes AGM 2008

Peter Bennett referred the meeting to their copy of the draft minutes, which had been published in the January 2009 edition of *The Whistle*.

Peter asked if anyone would like to move that the previous minutes be accepted as a true and accurate record. Proposed: Robina Cosser. Seconded: Stan van de Wiel.

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

Brian explained the rules, before declaring the only nominee, Peter Bennett elected

unopposed & accordingly, Peter resumed the chair.

Cynthia thanked Peter on behalf of the group, for his hard work this year, saying she was glad he was still in the saddle.

## 6(2). Executive positions

The following, being the only nominees were elected unopposed.

National Vice President: Brian Martin (and International Director)

National Junior Vice President: Jean Lennane

National Treasurer: Feliks Perera.

National Secretary: Cynthia Kardell

National Director: Greg McMahon.

Jean said this would be her last year. She was getting too old and her 'age and decrepitude' was getting to be a problem. Peter thanked her for her inspiration and nearly two decades of service to WBA and on behalf of the meeting, wished her well in the coming years.

## 6(3). National Ordinary Committee

### Members (6 positions)

The following nominees, being the only nominees were elected unopposed: Geoff Turner (also Director of Communications), Stan van de Wiel, Shelley Pezy, Toni Hoffman, Robina Cosser and Karen Smith.

Peter congratulated the incoming office bearers and particularly newcomer, Karen Smith on behalf of the meeting. He thanked them for their work and continuing support of whistleblowers and reminded the meeting that John Pezy and Peter Bowden, as the branch presidents of SA and NSW respectively, were automatically on the national committee.

Cynthia wanted to say a special thanks to Charmaine, the outgoing committee member, for flying the flag in WA for the first time. She hoped Charmaine would continue to help, even if informally.

## 7. Position of Public Officer

Feliks Perera told 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

Feliks tabled an authority prepared by Vince, for submission to the NSW Dept. of Fair Trading, together with our annual financial statement & the required fee. He moved a motion for the meeting to authorise two financial members, Cynthia and Peter, to sign the authority on its behalf. Seconded by Brian Martin. Carried.

## 8. Treasurer's Report: Feliks Perera

Feliks tabled a financial statement for the 12 month period ending 30 June 2009: a copy had been circulated to the attendees before the meeting.

Feliks explained we were in good nick: a surplus! Thanks to members bringing their subscriptions up to date and some donations, including the \$4945.11 (via Brian) from the Fund for Intellectual Dissent. Brian explained it was royalty payments accumulated over 15 years from the sale of his book *Intellectual Suppression*. When their bank started charging fees, Brian suggested and the others agreed to donate the money to Whistleblowers and close the account. Peter thanked Brian and asked him to thank the Fund on behalf of the group.

Feliks drew our attention to the 2008 Victorian Conference subsidy of \$1548.55, saying we have to prepare ourselves for some increase in conference costs. He thought it was money well spent and would settle the SA conference costs with Shelley and John before leaving.

Feliks noted member subscriptions were down, so took the opportunity to thank and welcome new SA members Julie Wilson and Mathew Bazeley. Cynthia added Judith and Bernadette also, as they had only recently joined.

Details of the Annual Statement of Accounts are as follows.

### Income

Subscriptions: \$2,742.00

Donations: \$475.00

Fund for Intellectual Dissent donation: \$4945.11

Public Lending Rights Agency payment for book *Intellectual Suppression*: \$59.95

Bank interest: \$1.14

Total Income: \$8,223.20

### Expenditure

*Whistle* production: \$2,385.48

Return to branches: \$250.00

Melbourne conference subsidy: \$1,548.55

Travel costs to Inquiry: \$264.00

Annual return Dept. Fair Trading: \$45.00

Bank charges: \$13.92

Total expenditure: \$4,506.95

### Excess of Income over Expenditure for the year: \$3,716.25

Balance sheet as at 30 June 2009

Total accumulated fund b/fwd 1 July 2008: \$10,109.10

**Add surplus for year ended 30 June 2009: \$3,716.25**

**Assets** (balance at bank) as at 30 June 2009: \$13,825.35

Peter called for the 2009 Statement of Accounts to be accepted as a true and accurate statement of our accounts. Proposed: Cynthia. Seconded: Stan.

## 9. Reports

### 9(1) Victoria: Stan van de Wiel

Stan reported he receives roughly 10 calls a year: most are about personal grievances, not whistleblowing. Paddy Dewan the surgeon and speaker, yesterday, was the most significant. Kim, Lori and he still meet over coffee every month or so, to discuss what's going on. He's done some work on funding over the year, which he'd like to take up with us. Perhaps in a workshop, if we have some time. Peter said as grants were on the agenda, it could be left until then. Stan added Mervyn still holds a meeting every first Sunday of the month. I think Brenda goes, so she might want to say something. Cynthia told him Mervyn had resigned.



Stan van de Wiel

### 9(2) South Australia: John Pezy

John said most of their year had been involved with organizing the conference. He gave us some of the background to why they decided on the venue and theme. It was Bernadette, with her union background, that inspired them to invite Janet Giles from Unions SA.

The most significant whistleblower story was still the radiation 'underdosing' at Royal Adelaide Hospital, which was exposed by Lotte Fog in 2008. He explained the power point display, at the back of the room, had been prepared by Lotte. The five short whistleblower stories shown after Lotte's presentation were supplied on DVD by Screenworld. They are the producers of the three part Law & Disorder series shown on SBS TV over the last three weeks and featuring, among others, Karen.

### 9(3) New South Wales + Education

#### report: Peter Bowden

Peter Bowden was unable to attend. He had provided a written report, which Peter read to the meeting: a copy was circulated to the attendees. Peter is critical of the NSW government's handling of the Gillian Sneddon case. Gillian exposed the now convicted paedophile Milton Orkopoulos MP. He writes how NSW government used Opposition moves to have the Gillian Sneddon affair investigated by parliamentary inquiry to re-open the earlier parliamentary inquiry. The report from the first inquiry hadn't got any further than the Premier's desk. The subsequent inquiry produced a set of proposals, for everyone's comment. The comments were synthesized into a final report, published only last month. Peter was also critical of the report's findings and recommendations. It is much weaker even than the Dreyfus report. Peter sounded pessimistic about the goings on in government, like Iguana-gate and the head of Sydney Ferries, who thought his corporate card was for personal junkets to the tune of \$237,000. Jim Regan remembered how the same government dealt with former fellow MP Franca Arena when she blew the whistle on paedophilia in high ranks.

Peter wrote he'd been busy spreading the word within the ranks of academic philosophers and ethicists across Australia, from his position of research fellow in ethics at Sydney University. He listed some of the papers and talks he'd given, including one on educational integrity at a conference in Wollongong.

### 9(4) Queensland: Feliks Perera

Feliks reported he had suffered a work injury and had been much less active this year. He had though taken many calls, most of which were personal problems or grievances. Fortunately Robina and Karen had been active, using their websites and the publicity around the SBS series to promote whistleblowing in education, health and the media.

Karen chipped in, saying the SBS series caused a tremendous surge of interest in whistleblowing on her website, with emails and telephone calls flying in all directions.

### 9(5) Communications: Geoff Turner

Geoff was unable to attend and had asked Cynthia to report in his stead. Cynthia reported he had been looking at a couple of potential new web hosts, but had decided against them. He will continue with this project, this year. Other technical developments and improvements he's done include hiding our address (on the website) behind an icon, which Geoff says has pretty much eliminated all the spammers. General maintenance, like removing the information about the Adelaide conference and

updating our contact details is ongoing. He plans to upload some information prepared by Cynthia, about available publications and books, under new headings (listed down the side of the webpage). Geoff also responds to the increasing number of email inquiries to the website, farming out only those he can't deal with to Cynthia and on occasion to others.

### 9(6) International relations & newsletter: Brian Martin

Brian told us how most of the overseas organizations aren't like us. Some in the USA, UK and Canada are funded and have fulltime paid staff. They only do so much. For example, GAP in the USA only takes about 1 in 20 of the cases it sees. The Public Concern at Work in the UK is much the same. Freedom to Care, with Geoff Hunt, in the UK is the only one like us. (It is now defunct.) Brian warned it might take some time. He said in many countries people don't understand the concept. Look at the different cultures. Identifying speaking out as whistleblowing started in the USA. Why? It's a highly individualistic society, not so constrained by family. Italy and Spain, for example, are very different. Caroline Hayes, one of our members, gave a paper in Spain some years ago and no one in the audience even understood the concept, but conceivably it will change with greater global activity.

Brian referred us to his website for an overview of how *The Whistle* was produced, because nothing had changed. Cynthia had suggested it could be printed in colour. He was happy to have suggestions and even more happy to have contributions.

### 9(7) SBS documentary on 2 December 2009: Karen Smith



Karen Smith



Karen described how the filming took two days. The dog got more walking than it had had for a long time, because they wanted things to be a certain way. The producers took hours of footage, but only used a small portion. They left out bits she wanted, but she was glad they used the quote from Martin Luther King — the bit where her bottom lip really got a wobble on.

Karen said she was glad she'd done it. Where before, she'd often got some pretty negative feedback from all sorts of people, this documentary seems to have put it in a whole new context. One people seem to be able to relate to better. She'd been overwhelmed by the response she'd got from the charity, where she does two days a week for the dole. Karen said she felt vindicated, in a way she hadn't before. She thanked her whistleblowing colleagues for their support and good will.

## 10. AGENDA ITEMS

### 10(1). Committee members' areas of interest: Brian Martin

Brian asked for any changes to the contact details and interests given on his website. Those concerned obliged and Brian updated it on his laptop, on the spot.

### 10(2). Preparation & circulation of a leaflet: Brian Martin

Brian suggested we have an information leaflet to distribute to other organizations and individuals. It would provide information about what you need to know before speaking out: being prepared, consulting & considering the options, that sort of thing. Peter suggested we get the union movement involved: to use their distribution networks. Brian Holden, Feliks and Bernadette suggested some other ways to get the information out. Brian volunteered to do a draft & circulate it for comment. Bernadette offered to help with distribution.

### 10(3). AGM 2010: Cynthia Kardell

Cynthia explained that the AGM should be in Brisbane next year. How the April, July & October editions of *The Whistle* could set the pace for getting things organized. For example: the venue & accommodation by early March, to publish it in the April *Whistle*. Then the members can make early arrangements for holidays around the event. Feliks & Judith felt they and Greg could do it. Judith posited the advantages of Queensland University of Technology, because it was close to the city & transport.

### 10(4). Standards Australia: Peter Bennett/Greg McMahon

Greg reported Standards Australia intended to review the requirements for whistleblowing systems. He had asked and been

accepted as the WBA representative on the review, with Peter as back-up and support.



Cynthia Kardell

### 10(5). 2009 Projects review: Peter Bennett

Peter reviewed the projects picked by various members at the last AGM. Briefly he, Cynthia, Kim, Peter Bowden & Greg had all made submissions to the federal inquiry into whistleblower protection. Cynthia & Peter Bowden: to the NSW inquiry. He also put one in to the federal review of public administration. Kim had penned a couple of articles for the media. Robina & Karen had had successes, with their websites.

He told the meeting Senator Ludwig's office had advised the draft whistleblower legislation would be tabled in parliament around April next year.

### 10(6). Membership rules: Peter Bennett

Peter is concerned about our rules. There is no provision to terminate the membership of a member. Cynthia distributed a copy of clauses 6-8 of our constitution, which state that membership continues, whether financial or not, until the member either dies, resigns or is expelled. The rules don't allow unfinancial members to vote or resign until the arrears are paid. Peter said we should remind them. Cynthia said we do: every year and in between. Cynthia provided some anecdotal accounts of trying to get members to pay the annual subscription. Alan suggested an amendment to allow the organization to terminate an unfinancial member after say 2 years. Cynthia said the practice was three to four years, because many got around to paying, eventually. The reasons vary: they move house, promise to pay when they can, forget, lose the new reminder: deaths, disasters and other more important commitments. Comments flew in every direction. Cynthia advised that changing

the rules would have to wait for another AGM: when someone puts up a formal motion to amend the relevant rule, with at least one month's notice to all members.

### 10(7). Definitions: Peter Bennett

Peter is concerned that we do not have an agreed definition for the word whistleblowing. He felt there should be some limitation: for example, some bodies limit it to employees and others include grievances. He thought WBA shouldn't leave it to others. We'd look silly. Brenda & Brian Holden suggested he look up the dictionary. Brian obliged by checking his computer's dictionary: a person who informs on illicit activity. Jim helpfully suggested he could provide the definition adopted by the 1993 Senate Inquiry 'In the Public Interest'. Brian read out two definitions he has on his website. One, an act of dissent and the other a much longer effort he attributed to Bill de Maria. Cynthia circulated a copy of clause 3, the objects of our constitution and our leaflet. Brenda felt our objects & leaflet say it all. Peter said disclosing information in the public interest almost gets you there, but it doesn't mention the person. Cynthia said it is implied. She said we don't need to tie ourselves to a definition: we just need to be able to persuade government & other bodies what *they* should adopt. We don't want to *have to* update it, change it, amend or rethink it, so as to stay ahead the legislators and policymakers. So we need to stick with commonly understood concepts: to keep it as broad as we can in the public's interest. So we can push them to put aside their natural inclination to continually limit (by definition) the categories of 'a person' it applies to. The SA legislation is the ticket here: it applies to any 'person'. But then SA has always managed to lead in public life.

Peter said all he wanted was for us to vote on whether we should have one. Cynthia thought that wouldn't be fair, because the email discussion/committee group (including her, Brian, Kim, Peter Bowden, Stan, Jean, Greg, Keith, the Pezys and others) had been arguing this issue by email on and off for well over a year and to date, there was no consensus. Peter agreed. It was 5pm.

## 11. Close of meeting

Peter asked the meeting to join with him in thanking Shelley and John for a very stimulating and enjoyable weekend, Feliks for handling the finances and everyone for their good will and humour. He wished us safe journey and looked forward to seeing everyone again in Brisbane in December 2010.

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## Whistleblowers Australia contacts

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**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 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, Balmain 2041

**Contact** Cynthia Kardell, phone 02 9484 6895, fax 02 9481 4431, ckardell@iprimus.com.au; Peter Bennett, phone 07 6679 3851, bennettpp@optusnet.com.au  
**Website:** <http://www.whistleblowers.org.au/>

### Goulburn region contact

Rob Cumming, phone 0428 483 155.

**Wollongong contact** Brian Martin, phone 02 4221 3763.  
**Website:** <http://www.bmartin.cc/dissent/>

**Queensland contacts** Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232, jarmin@ozemail.com.au

**South Australia contact** John Pezy, phone 08 8337 8912

**Tasmania** Whistleblowers Tasmania contact, Isla MacGregor, phone 03 6239 1054

**Victoria contact** Stan van de Wiel, phone 0414 354 448

### Whistle

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Thanks to Cynthia Kardell and Patricia Young for proofreading

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## Credit to the media

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A DECORATED officer who exposed cronyism and corruption in the police force has returned to duty after 18 months of being forced to see psychiatrists despite being medically fit.

Sergeant Robbie Munn said he was greeted by "a lot of smiles, handshakes and pats on the back" by other officers at the Maroochydore police station after battling against police bureaucracy.

Sgt Munn, who rebelled against a culture he said deterred whistleblowers from reporting "dirty little secrets" in the service, credited an October story in *The Courier-Mail* with restoring his career.

Only days before the story ran, Sgt Munn was barred from duty but within hours of the story's publication his doctor received a report clearing him for service.

"The story was the only reason I was allowed back," he said. "I still think they want me out and will try to medically retire me."

Sgt Munn is working three days a week on a rehabilitation programme recommended for him last year but only offered to him after the story appeared. ...

Sgt Munn, who was in charge of 70 police officers at Maroochydore, said he was smeared in the bureaucracy after exposing that police cheated on promotion exams by plagiarising and paying others to complete their work. ...

Police bureaucrats sat on a favourable report on his mental condition until after the newspaper article appeared.

— Tuck Thompson, "Finally back on the beat: handshakes all round as honest cop defeats police bureaucracy," *The Courier-Mail*, 16 November 2009, p. 10

## 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**