

*"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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## Conference and annual general meeting

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### Conference

Saturday 14 November 2015  
8.15am for 9am

### AGM

Sunday 15 November 2015  
8.15am for 9am

**Venue:** Uniting Church Ministry Convention Centre on Masons Drive, North Parramatta, Sydney NSW

**Non-members:** \$65 per day, includes lunch & morning/afternoon tea. Optional \$25 extra for dinner onsite 6pm Saturday night

**Members, concessional cardholders and students:** \$45 per day

This charge may be waived for members, concessional cardholders and students from interstate, on prior application to WBA secretary Jeannie Berger (jayjellybean@aol.com).

Optional dinner @ \$20 a head, onsite 6pm Saturday night.

**Bookings:** notify full details to treasurer Feliks Perera by phone on (07) 5448 8218 or at feliksfrommarcoola@gmail.com or president Cynthia Kardell (for phone/email see below under enquiries).

**Payment:** Mail cheque made payable to Whistleblowers Australia Inc. to the treasurer, Feliks Perera, at 1/5 Wayne Ave, Marcoola Qld 4564, **or** pay Whistleblowers Australia Inc by deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626 **or** by credit card using PayPal to account name wba@whistleblowers.org.au.

**Low-cost quality accommodation is available at the venue:** Book directly with and pay the venue. Call 1300 138 125 or email service@unitingvenues.org

**Enquiries:** ring national president Cynthia Kardell on (02) 9484 6895  
or email ckardell@iprimus.com.au

*If you are new to WBA and would like to tell your whistleblowing story at the conference, let Cynthia know.*

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## Book reviews

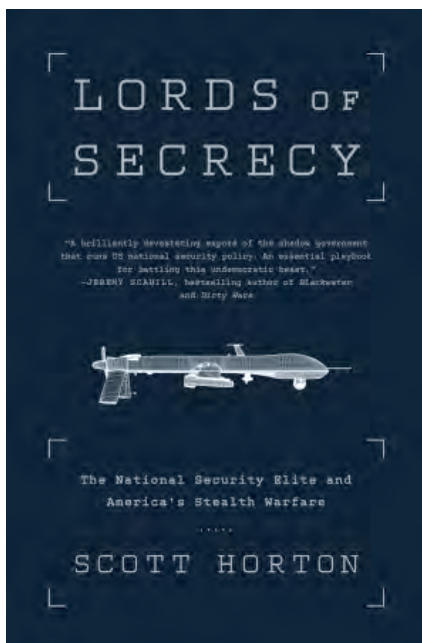
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BOOK REVIEW

### *Lords of Secrecy*

Reviewed by Brian Martin

OPEN discussion is the lifeblood of a democratic society, according to Scott Horton in his new book *Lords of Secrecy*. With the rise of a national security elite in the US, secrecy has become excessive and dangerous. The new secrecy regime is unprecedented in US history. Part of the story is a “war on whistleblowers.”



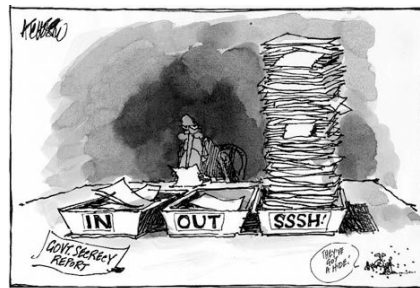
*Lords of Secrecy* is wide-ranging and illuminating. Before I address Horton's discussion of whistleblowing, it's useful to review earlier chapters, which deal with ancient Greek democracy, the bureaucratic addiction to secrecy, the rise of the US national security state, and stealth warfare.

Horton begins his analysis by going back to the democracies in ancient Greece. He quotes writers from that time and contemporary scholars to argue that public discussion of issues was crucial to the success of ancient Athens against its more dictatorial rivals such as Sparta.

One of the key ideas Horton takes from the experiences in ancient Athens is “knowledge-based democracy.” Access to information, combined with

public discussion, enables citizens to become knowledgeable, and this in turn is the most solid basis for forming wise policies. Secrecy, on the other hand, is toxic to the democratic spirit, because it permits special interests to get their way at the expense of the wider population.

Fast forwarding to the 1900s, Horton examines the rise of bureaucracy, a system of organising work involving hierarchy and a division of labour. Most large organisations, whether in governments, corporations or churches, are bureaucratic. Horton is especially interested in government bureaucracies and in one of their central tools: secrecy. Bureaucrats gain power through exclusive access to knowledge; secrecy is their preferred mode of stymieing challenges.



Horton next turns to the US national security state, which emerged in the aftermath of World War II in response to the challenge posed by the Soviet Union and in particular the development of nuclear weapons, carried out in top secrecy. The national security state in the US includes the Central Intelligence Agency and the National Security Agency. The original enabling legislation for the CIA was, according to Horton, sensitive to the dangers posed by a secrecy regime, but over several decades the bureaucratic imperative gradually overwhelmed the oversight mechanisms in the system.

Theoretically, the legislative branch of government is supposed to provide control over the unchecked growth of executive power. However, the US Congress has been inadequate to the task of reining in the ever-expanding national security state, with a primary reason being the use of secrecy. Another potential check is the courts,

but these have been nobbled by secrecy, with most judges simply acquiescing to claims about national security.

So the system of representative government based on three branches — executive, legislative, judicial — that act as controls on each other has broken down in the US. The executive has emerged as dominant, with secrecy as its chosen tool to prevent scrutiny of abuses.

The system cannot police itself, so the media are vital in challenging abuses. Yet in the US the mass media have largely succumbed to government imperatives. Edward Snowden realised this and, rather than provide his material to the *New York Times*, went instead to the British-based *Guardian*.

The damage caused by excessive secrecy is shown by the rise of drone warfare. Pilotless aircraft are sent on missions, being guided by workers safe in bunkers in Nevada, to monitor and sometimes to kill targets identified as threats to the US. This is basically assassination, with the targets executed without arrest or trial.



The US drone programme has been cloaked in extreme secrecy. Massively expanded under Obama's administration, information provided to the public and media is highly selective. Few members of the public realise that drone strikes can be counterproductive. People in targeted countries, such as Pakistan, learn about strikes, including civilian casualties, and learn to hate the US. The strikes may kill a few militants, but at the expense of recruiting many more to the militants' cause. There is little public discussion of these issues because of secrecy and the servility of US mainstream media.



People in Pakistan know more about the drones than US citizens.

Horton summarises his argument:

I have argued that the rising power and influence of the American national security elite are attributable mainly to the use of secrecy as a tool. In essence, classification regimes are used to lock in and control analysts down the chain of command and to exclude vital national security issues from effective public debate and hence from democratic process. Instead, only the lords of secrecy and their acolytes provide the vital information and analysis that lead to decisions on war and peace: whether troops should be committed to a struggle on foreign soil, aircraft should be deployed, or drones and cruise missiles used for strikes. (pp. 153–154)



Scott Horton

### Whistleblowers under attack

In this context, it is not surprising that the national security elite have targeted whistleblowers as threats to their secrecy regime. Horton devotes an entire chapter to “The war on whistleblowers.” As part of the assault on whistleblowers, the Obama administration has used the espionage act, passed during World War I, to prosecute whistleblowers, even though no espionage is involved.

More such prosecutions have been made under Obama’s presidency than

under all previous presidents. However, Horton does not blame Obama, but rather the increasing power of the national security elite, and the corrosive effect of excessive secrecy. Horton does not necessarily support national security whistleblowers. For example, he is critical of WikiLeaks and Chelsea Manning. But Horton’s deeper concern is that it is virtually impossible to have an informed public discussion of the issues because of the level of secrecy involving national security.

Horton notes that leaking is standard procedure by politicians and top bureaucrats, for example to test the response to proposed policies. Secrecy is used selectively. Elites can leak with impunity to serve political or personal agendas, but when lower level workers leak in the public interest, they are targeted for exemplary prosecutions. Horton discusses the cases of Stephen Kim, Jeffrey Stirling and Thomas Drake, noting that the way they have been treated has been vindictive and even counterproductive, in that they undermine respect for the secrecy system itself. Yet the national security elite cannot recognise the damage their own actions are causing because of the secrecy they impose and the consequent lack of public discussion.

Here is Horton’s assessment of the espionage cases against whistleblowers.

The Justice Department may not win its cases in federal court. It may even be criticized by a federal judge who gets a clear sense of how the department’s national security division abuses prosecutorial powers for the benefit of the national security state. But in the end, it can consider many lost cases as successful just the same: it has chilled the environment concerning classified information and nipped in the bud a great deal of national security reporting that would otherwise help the public understand what their government is up to.

Most significantly, it sends a clear message to would-be whistleblowers: *We will destroy you. You will lose your pension, your savings, your house. You won’t be able to send your children to*

*college or find a job commensurate with your education and experience. We will make your life a never-ending hell. And the courts and your attorneys will be powerless to help you in any way.* The Drake case shows us a Justice Department prepared to abuse its massive powers for the benefit of the intelligence community. It also points to the immense imbalance in power among national security prosecutors, the courts, and accused whistleblowers. (p. 139; emphasis by Horton)



Thomas Drake

### Australian lords of secrecy

The relevance of Horton’s analysis to Australia is fairly obvious. Especially in the years after the 9/11 attacks and the Bali bombing, Australia’s security agencies have been given massive funding increases. In Australia, government operations have always been subject to far more secrecy than in the US, and this has only been accentuated in recent years. The latest assaults on public discussion have included laws criminalising whistleblowing and journalism on national security, data retention laws that will enable tracking down leakers and leak recipients more easily, and laws against speaking out about asylum seekers in detention.

On the one hand, in Australia there are numerous whistleblower protection laws, but on the other hand the new laws show what the government really wants, namely that no one should have the temerity to expose the activities of

powerful groups. Scrutiny is one way: the government reserves for itself the power to maintain surveillance over citizens, but wants to prevent citizens from exposing the crimes and follies of those at the top.

*Lords of Secrecy* is a powerful argument for knowledge-based democracy, in which secrecy is minimised so that public discussion can sort good ideas from bad. For whistleblowers, there are a few take-home messages. First, public discussion of contentious issues is vital for a thriving democracy. Second, secrecy is regularly used as a tool by elites to prevent discussion and scrutiny. Third, whistleblowers play an important role in challenging the secrecy system. The implication is that a good way to assess whistleblowing is whether it contributes to greater public understanding and discussion.

Scott Horton, *Lords of secrecy: the national security elite and America's stealth warfare* (New York: Nation Books, 2015)

Brian Martin is editor of *The Whistle*.

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#### BOOK REVIEW

### *In the Public Interest*

Reviewed by James Page

Peter Bowden's book *In the Public Interest* is a valuable contribution to the growing collection of critical literature on whistleblowing and the way that agencies respond to whistleblowing. It's written by a former professor of administrative studies at Manchester University, who also has wide international experience, and thus is well qualified to write on this topic.

The scope of the book is ambitious. Bowden announces in the preface that the book "is aimed at strengthening ethical practices in our institutions of government and in our business organisations", and proceeds to examine examples in the UK, USA and Australia. The book also seeks to serve as a self-help book for would-be whistleblowers, and to provide some ethical underpinning for whistleblowing.

There were many aspects of this book which I found intriguing. One is

how we define whistleblowing. Bowden differentiates whistleblowing from social activism, although it seems that within a global society this distinction is becoming increasingly blurred. For instance, if a citizen speaks out against a social wrong, and is persecuted by his/her government, should he/she be regarded as a whistleblower? I'm starting to think that the popular understanding of a whistleblower, that is, any person who speaks out against wrong, may be the most appropriate.

I was intrigued with Bowden's discussion on why whistleblowers tend to be, in a general and theoretical sense, highly regarded, but paradoxically demonized within specific organizations. Bowden suggests the answer lies in our atavistic desire to belong, to be part of a group. Whistleblowers are often deemed to be a threat to the group. Otherwise put, they are seen to be disloyal. Of course, seeing whistleblowers as disloyal is superficial. If one has the courage to speak out about wrong within an organization or group, that ultimately is a statement that the person believes the group is of value.

I was also intrigued with Bowden's own journey as a whistleblower. He only mentions this in passing (it involved his work with an NGO, and subsequent reprisals against him for having pointed out maladministration within that NGO), but it is clearly important for him. I would call this the existential dimension of whistleblowing. I suspect that one can only really appreciate how wrong it is that whistleblowers are, in most cases, badly treated, and the need for social change here, once one has been down that path of being a whistleblower oneself.

Weaknesses with the book? Perhaps the scope of the book is too ambitious. For instance, I'm not sure that Bowden adequately deals with the important issue of providing an ethical underpinning for whistleblowing. I would have liked to have seen more on deontological ethics, namely, the duty to speak out when one sees a wrong. And I believe virtue ethics has the potential to be empowering for whistleblowers, in that telling the truth is part of a person's integrity, and further that this personal integrity is something that an organisation may well attack, but ultimately can never destroy.

I also had some doubt as to how effective the book was as a potential self-help guide to whistleblowers. I would have liked to have seen more on how to use the so-called Dracula Solution, that is, shining light on organizational wrongdoing through disclosure on the internet and the media. Given that whistleblowers are generally people under a great deal of pressure, I suspect that a "how to blow the whistle" approach would be most effective.

The above are, however, minor criticisms. Bowden advocates that the ethics and practicalities of whistleblowing ought to be taught at university-level courses in public and business administration, and I suspect he is correct here. It is possible that his book may end up as a text for students in this field.



Peter Bowden, *In the Public Interest: Protecting Whistleblowers and Those Who Speak Out*. Melbourne, Tilde Publishing, 2014.

Dr James Page is an adjunct associate professor at the University of New England.

### Apathy fuels financial sector antipathy

This country has no effective protection for private sector whistleblowers or any compensation for the price you pay.

Jeff Morris  
*Sydney Morning Herald*  
24 June 2015, p. 28



Illustration: Rocco Fazzari.

IT IS more than 200 years since it is reputed Edmund Burke said: “The only thing necessary for the triumph of evil is for good men to do nothing.”

He could be talking about the current state of play in the financial services sector in this country.

To put it bluntly, evil has triumphed for far too long and too many people have sat on the sidelines watching.



Jeff Morris  
Photo: James Brickwood

In 2008 I was one of “The Ferrets” who first blew the whistle on the management conspiracy at the Commonwealth Bank of Australia to cover up the misdeeds of “rogue” financial planner Don Nguyen and deny the trusting clients the compensation to which they were entitled.

These people trusted the CBA as a financial institution and in return CBA behaved like a crime syndicate in covering up the malfeasance of Nguyen and a raft of other so called “rogue” planners.

Crime syndicates can flourish only

when the police, for whatever reason, are ineffectual and police don’t come much worse than the corporate cops at ASIC [Australian Securities and Investments Commission].

The personal cost to me and my family of being a whistleblower at CBA was very high. Finally I was left alone by ASIC to negotiate my exit from CBA as best I could. The worst of it was that I knew ASIC had comprehensively bungled their task at CBA.

Two years ago I therefore blew the whistle on ASIC and a good man, Senator John “Wacka” Williams, moved for a Senate inquiry.

The CBA/ASIC party line fell apart at the ensuing inquiry. Among other things, it emerged that the compensation scheme for victims had indeed been a stitch-up as the senators concluded that neither CBA nor ASIC could be trusted to put it right!

Ultimately the Senate inquiry found enough shocking behaviour at CBA to soberly conclude that an unprecedented royal commission into the CBA, a solvent private company, was “warranted.”

The good men had fought the good fight and the umpire had given his decision.

Before the ink was dry on the 547-page Senate report however the Abbott government was hosing down any prospect of a royal commission. The question has to be asked: why? Why did the government choose to run a protection racket for the CBA? Why did City Hall look the other way? Was this a crime syndicate that was too big to take on?

CBA was let off the royal commission that would have fully exposed its malfeasance in return for yet another CBA-run compensation programme that managed to pay out only “about three” victims in 10 months, according to the bank. CBA has been deceiving its victims since at least 2003 and, thanks to the complicity of the Abbott government, most of them are still waiting to be paid.

But the CBA story has acted as a call to arms and good men everywhere are stirring.

A whistleblower at NAB [National

Australia Bank] didn’t waste his time with ASIC but went straight to Fairfax Media. ASIC had been tipped off numerous times about what was going on at NAB but had done nothing for at least five years. No thanks to ASIC, the victims are at least finally getting paid.

Now whistleblowers have exposed IOOF. One made the mistake of going to the company first as an internal whistleblower. IOOF now seeks to portray him as a disgruntled former employee with an axe to grind but don’t mention the fact that they sacked him after he became a whistleblower.

The whistleblower at NAB, like my colleagues at CBA, has chosen to remain in the shadows. Who could blame them? There is no effective protection for private sector whistleblowers in this country. There is no compensation for the personal and professional price that you pay either.

In this vacuum, companies are free to treat whistleblowers with the utmost ruthlessness and this occurs even in cases where they are publicly pretending to be contrite after having been exposed.

Despite this hostile environment, enough whistleblowers have now come forward to expose a culture of greed and unethical behaviour in our major financial institutions that would have been unimaginable a generation ago.

Yet, seemingly indifferent to the widespread financial devastation for ordinary Australians that each new scandal represents, the Abbott government responds like a parrot with repeated refusals to call a royal commission into their friends at the big end of town.

This is the same government that called royal commissions in a heartbeat into unions and pink batts when it got a whiff of political expediency.

At the end of the day though, the Abbott government can only get away with this sort of behaviour if good people acquiesce.

Jeff Morris is a former financial planner and a whistleblower.



## SES whistleblower Tara McCarthy left out in cold

Cydonee Mardon

*Illawarra Mercury*, 14 May 2015



Tara McCarthy  
Picture: Nic Walker

AN SES deputy commissioner who was improperly sacked for exposing potential misconduct says her ordeal has left her disappointed in a system that still fails to protect people who report potential corruption and maladministration.

Tara McCarthy, the first female deputy commissioner in the 60-year history of the State Emergency Service, was vindicated when the Independent Commission Against Corruption found her boss Murray Kear acted corruptly by sacking her in May 2013 for making allegations against his “mate” Steve Pearce.

Kear now faces a criminal charge of taking detrimental action in reprisal for a person making a public-interest disclosure. That case has been adjourned until June.

Mr Pearce, who was suspended on full pay during the investigation, was returned to his position late last year. No findings of corruption have been made against him.

Ms McCarthy on the other hand was only offered a six-month contract. Just weeks after returning to the SES, she was told her role was being abolished.

“In a really short time after finally returning to the job I loved, I was told my role as deputy commissioner corporate services was being deleted,” she said.

“All the functions of my position would be performed by the commissioner and my job was being abolished.”

Ms McCarthy said she and Mr Pearce both applied for Mr Pearce’s position — deputy commissioner of operations — when the SES restructured and formally abolished her role. Neither was successful.

“Even though the remaining deputy position bore little resemblance to the role I had held, I decided to apply anyway,” Ms McCarthy said.

Despite meeting the capabilities of the role, she was informed she was unsuccessful.

Ms McCarthy said she was never reinstated, just returned on a six-month contract so she had no option but to finish up when the six months ended.

In 2014, after being vindicated by the ICAC, she had to wait another five months to return to work.

She said the impending court action over her case did not give her any comfort, regardless of the outcome. “I didn’t get my job back and that’s pretty disappointing. Any further legal action against Murray Kear isn’t going to change that,” she said.

“People come up to me and say ‘It’s great what you did, I really admire your courage, but after seeing what happened to you there’s no way I would ever blow the whistle’.

“I think it is really sad that my case has shown people that they won’t be protected and I really hope the government introduces reforms to ensure there are reinstatement provisions. Public servants need to be confident they will be protected.”

Ms McCarthy did not receive redundancy from the SES because she had returned on contract.

She said she was relieved to have a new role as general manager for quality assurance at Transport for NSW.

“I’m really happy to have this job and excited about the future, but I am disappointed that I had to leave the SES and a job I loved.”

An SES spokeswoman told the *Mercury* the SES was implementing

employment reforms under the Government Sector Employment Act.

“This process is occurring across all departments and is part of the NSW Government’s ongoing commitment to improve transparency and accountability in the way it employs senior executive staff and to promote greater efficiency in decision-making.”

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## Whistleblower app

Liam Tung

*The Age*, 12 May 2015



Sylvain Mansotte

BLOWING the whistle on company fraud is all risk and little reward for people who report it. A one-time whistleblower hopes to even the scales with a new app that helps people report fraud anonymously.

Whistleblowers are likely to be socially ostracised, may face threats and probably won’t have a career after reporting fraud. They also won’t be rewarded for reporting fraud to their employer or the Australian Securities and Investments Commission (ASIC).

Despite this, Sylvain Mansotte, founder of the whistleblowing website FraudSec, had the grit to report a multi-million-dollar fraud while employed at one of Australia’s largest construction firms.

“It was my first experience as a whistleblower,” Mansotte told Fairfax.

Mansotte arrived in Australia from France in 2005, and quickly landed a role within the construction firm’s first procurement team, a small group that was tasked with bringing order to billions of dollars spent each year on procurement, including on travel and accommodation expenses.

While poring over accommodation spending, one item stood out to Mansotte: a property, registered as an Australian business, had invoiced the construction firm \$2 million in a single year.

“Sometimes when you work remotely in Australia you can put a lot of money towards these expenses, but this was hefty,” Mansotte told Fairfax.

A call to accounts payable revealed the property was charging for consulting services, which he later uncovered had submitted nearly 300 invoices in 12 years, totalling over \$20 million.

Mansotte didn’t know it was an inside job until he’d found a name on the company’s intranet that matched a record he’d dug up on ASIC’s database linked to the property. It turned out to have been owned by a senior finance manager at the construction firm.

The incident was wrapped up swiftly. The fraudster was arrested, immediately admitted to the crime and is still serving out the jail sentence. Mansotte for his part was offered a new role in the risk and fraud department.

“From that day until 2014, my job was to investigate and detect fraud and talk to whistleblowers,” he said.

Mansotte was fortunate to have been part of a team whose job was to root out erroneous spending. The employees who came to him, however — typically from construction sites — often wanted to report a fraud but felt they couldn’t. This inspired him to create FraudSec.

Whistleblower hotlines for employees aren’t new. The “big four” accounting firms provide services to clients that allow employees and suppliers to call in, send an email or file a report on the company’s intranet. They also allow whistleblowers to file reports anonymously.

But, according to Mansotte, these services don’t take into account whistleblowers’ fear of being identified and that they tend to limit disclosures when calling a hotline.

“Those guys on the ground feared for their job and feared for their family. They knew everything that was happening but didn’t want to take the risk with a whistleblower hotline or fill out a form on the intranet site that can be tracked by the company quite easily.”

The whistleblower website, hosted on Amazon Web Services’ cloud, lets employees anonymously report fraud from their smartphone or desktop browser over an encrypted connection. Once received, files are encrypted

using AES 256-bit encryption — the same standard used by Wickr, the messaging app preferred by Malcolm Turnbull to communicate privately with peers. Mansotte said FraudSec discourages employees from reporting fraud from company-owned devices and the company network.



Old-fashioned whistleblower app

Compared to a whistleblower hotline however, the most interesting feature of FraudSec may not be encryption but its messaging capability, which lets the company reply to the whistleblower without the person having to reveal their name, phone number or email address.

It may encourage more anonymous tip-offs despite the lack of incentives to report fraud in Australia. There are protections for whistleblowers but they only apply if a person is willing to go on the record. In the US, the Securities and Exchange Commission (SEC) last year paid out a \$30 million bounty to a whistleblower, whereas Australian reporters get nothing for their troubles.

A senate committee reviewing ASIC’s handling of whistleblowers last year recommended a similar scheme to redress the lack of incentives for Australian whistleblowers. But payouts are best seen as compensation for the loss of a career, according to Jason Masters, a seasoned director whose consultancy specialises in audit, risk and technology.

“If you’re a whistleblower there’s a high probability that your career will be destroyed and you’ll probably end up suffering severe emotional and mental issues. The [SEC] reward compensates them potentially for the loss of their career,” Masters told Fairfax.

Masters is trialling FraudSec’s service and has also vetted whistleblower services provided to his clients by “big four” accounting firms. He

says the “big four” do investigate and pass on reports they receive, but points to a key difference when handling reports from anonymous tipsters.

“One of the problems with whistleblowing hotlines is where you get someone who’s an anonymous whistleblower. You have to find ways to encourage that person to call back in. You actually have no way of contacting them back,” said Masters.

In the absence of financial incentives, FraudSec at least may boost the number of reports that companies, law enforcement and ASIC receive about fraud.

ASIC gave qualified support to such services, telling Fairfax that whistleblowers “can be valuable intelligence about issues and conduct occurring in the organisations and activities that ASIC regulates.”

“While we don’t endorse any product as a crutch for good practices and processes, we welcome anything that may assist,” a spokesperson told Fairfax.

The NSW Police Fraud & Cyber-crime Squad, which also investigates fraud in corporate settings, said whistleblowers are “often critical in helping us successfully complete our investigations.”

“We are open to hearing about any initiatives that help law enforcement agencies combat fraud, and are regularly kept abreast of new security-focused technology platforms that help prevent and/or identify suspicious activity,” a spokesperson said.

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## Dark secrets for sale

Chris Baraniuk

*New Scientist*, 18 February 2015

*A new site that lets people sell secret documents online will make life easier for whistleblowers — and blackmailers*

PSST, wanna know a secret? You’ll just have to give me some money first. That’s how the creators of Darkleaks, a “black market where you can sell information,” imagine the next generation of whistleblowers will operate.

The impact of whistleblowers today has never been greater: from Edward Snowden’s revelations about mass surveillance to the HSBC employee

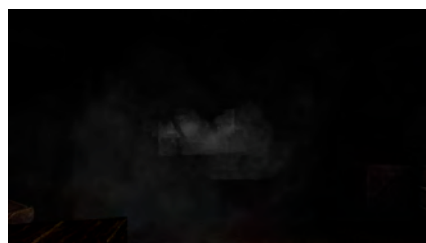


who exposed the bank's efforts to help clients evade hundreds of millions of dollars in tax payments.

But not all leaks are in the public interest. For example there has also been a sharp rise in malicious leaks, such as the 500 private photographs of celebrities which were distributed online last August.

Darkleaks could facilitate all kinds of disclosure, positive and negative, via an anonymous marketplace. The service is available to download online as a free software package and its source code has been published openly online via code-sharing website Github. Users can upload a file with a description that can be viewed by potential buyers browsing the marketplace. This is all done within the software itself.

Its developers say that individuals may wish to use the service to anonymously auction off "trade secrets," "military intelligence" and "proof of tax evasion" among other, rather more unsavoury, things.



A dark secret

Darkleaks promises to make transactions for this sort of material anonymous. A blog post announcing the tool insists: "There is no identity, no central operator and no interaction between leaker and buyers."

Instead, the documents are broken into smaller chunks, encrypted by Darkleaks and added to the bitcoin block chain, a register of bitcoin payments. This is possible because minuscule bitcoin transactions can be used by anyone to store data in the block chain. Indeed, there are already services like Storj which offer to store data in bitcoin-style block chains in this manner.

Crucially, small pieces of a file up for sale will be released to potential buyers so that they can verify its contents before committing to a transaction for the whole thing. When they have made that commitment, and the

seller claims his or her bitcoins, a key will be released allowing the buyer to decrypt the document in question.

It's just one of a series of "platforms" for leaking sensitive information which have appeared in recent years. From WikiLeaks to the *Guardian* newspaper's SecureDrop software, there are now many technological portals to which leakers may turn in an effort to get a burning secret out. And projects such as GlobaLeaks hope to create a decentralised forum for the release of information.

However, until now none of these services has featured direct payment for a leak.

So is the financial aspect really necessary? Annie Machon, a former MI5 intelligence officer and whistleblower, says it is unfortunate that Darkleaks has equated whistleblowing with selling information. This is also the opinion of Beatrice Edwards, executive director of the Government Accountability Project in the US.

"When you're selling information you're not really a whistleblower under the legislative legal definition in almost any country," she points out. Only in special circumstances, such as the US financial services, when whistleblowers may receive a cut of fines imposed on their corporations, has this been enshrined in law. However, Edwards adds that the current climate may encourage whistleblowers to take unusual steps in order to protect themselves and release information in the public interest.

### Going underground

"We have seen in the US an increasingly punitive attitude on the part of the government towards whistleblowers," Edwards says. "This could force them into some underground exchange of information like this because the Obama administration prosecutes national security whistleblowers rather than protecting them."

Machon agrees. "You do need these sorts of groups," she says. "We are looking at a period of small, nimble information freedom fighters pushing back against these homogenised corporate and state powers to protect our basic human rights."

James Young is an attorney at international law firm Morgan & Morgan who represents whistleblowers

in the financial industry. He says that those wanting to expose wrongdoing have expressed a need for more secure channels through which to do so.

"There is a need for whistleblowers to confidentially and securely share information with news media, attorneys, the government or whoever might be the right person to get it," he says. "With everything we know about cellphones and the internet, there's no sure-fire way to do that right now."

Some may question the darker side of Darkleaks. One of the suggested disclosures that users could make via the service, according to its creators, is the publication of "celebrity sex pictures." Already, one individual claims to be auctioning thousands of passwords and private messages via the site, though this has not yet been verified.

For Edwards, this is where the definition of whistleblower breaks down. "In distinction from a whistleblower, a snitch or an informer pursues his or her own interest. Someone who is selling information and needs to anonymise the exchange is probably someone who fits in to that category," she says.

Cody Wilson is an anarchist and co-founder of Dark Wallet, a digital bitcoin wallet which promises to make transactions practically impossible to trace. Wilson was not involved in the development of Darkleaks but says he has watched the service's launch with interest. "It's a necessary step for the advancement of decentralised and block chain-based technologies," he says, arguing that corporations and state dominance should be challenged more aggressively by the public.

Wilson achieved notoriety in 2012 when he launched the Wiki Weapon Project, which allowed anyone to download 3D printable guns via the internet. Will people suffer as a result of unsavoury leaks made via Darkleaks? "Without a doubt," he says. "There are going to be victims."

## Doctors and teachers gagged under new immigration laws

Sarah Whyte  
*Sydney Morning Herald*  
4 June 2015, p. 12

DOCTORS and teachers working in immigration detention facilities could face up to two years in prison if they speak out against conditions in the centres or provide information to journalists, under sweeping new laws to gag whistleblowers.

The Border Force Act, which was passed quietly on May 14 by both major parties, clamps down on “entrusted people” in detention centres recording or disclosing information about conditions in centres such as those on Nauru and Manus Island.

Under the heading of “secrecy and disclosure provisions”, the act says releasing information is only permitted by the secretary of the department responsible for detention centres.



“Under the proposed measures, the unauthorised disclosures of information, including personal information will be punishable by imprisonment for two years,” it says. The new law will be enforced in July in conjunction with the official merger of the Immigration and Customs departments.

Australian Medical Association president Brian Owler, said this was the first time doctors had been threatened with jail time for revealing inadequate conditions for their patients in immigration centres.

“Clearly if doctors are moved to speak out about issues then they should be able to do so,” he said. “That’s one of the responsibilities that most doctors feel they have.

“This puts most doctors in these circumstances in a very difficult situation if they have to face two years’ imprisonment for speaking out, or be

quiet and let people suffer. That’s not appropriate.”

“People can sometimes have their contracts terminated, but I don’t recall anyone ever being threatened with imprisonment for speaking out,” Dr Owler said.

On Sunday, the AMA passed an “urgency motion” at its national conference, requesting that the federal government review the Border Force Act as a matter of urgency. It also called for the government to amend the act to exempt medical practitioners who disclose, in the public interest, failures in healthcare delivery in immigration detention centres, from prosecution.

The new law means doctors like Dr David Isaacs, who worked on Nauru for the International Health and Medical Service, could face jail time.

Dr Isaacs told *Fairfax Media* in February how shocked he was about the conditions on Nauru, saying there were not enough sanitary pads available to women, and children and women were forced to shower behind a flimsy curtain that often flew open in front of male guards.

Lawyer George Newhouse said it was unprecedented for the government to target contractors for raising their concerns publicly.

“It is an extremely draconian law, giving a department like Immigration ASIO-like secrecy powers,” he said.

“There is no justification for this iron curtain which has been placed around immigration detention other than that the Commonwealth doesn’t want Australians and the rest of the world to know about the abominations that are taking place under their watch.”

“This is all about the minister wanting to cover up the government’s mistakes, which go as far as murder and sexual abuse, including child sexual abuse, [under its watch].”

The new law can be overridden by the Public Interest Disclosure Act, which allows officials and contractors to report maladministration. But doctors are concerned that this exemption may not include disclosing inadequate health care of their patients.

This is not the first time people working in immigration facilities have been targeted for raising concerns about the conditions. In October last

year, then immigration minister Scott Morrison used an anti-whistleblowing law against 10 Save the Children staff on Nauru.

The staff were referred to the Australian Federal Police under section 70 of the Crimes Act after they were accused of communicating privileged information to non-Commonwealth workers. All accusations were later dropped.

Doctors for Refugees co-founder Dr Richard Kidd said the new law was taking away all transparency and accountability.

“It is absolutely clear that doctors and nurses are expected as part of their registration to put the best interests of their patients first and that includes advocating for [people] being denied appropriate health services or being abuse in some way,” he said.

In a media release last month, Immigration Minister Peter Dutton said the new law would “further strengthen the government’s ability to protect Australia’s border.”

A spokeswoman for Mr Dutton said there were “appropriate mechanisms for reporting misconduct or maladministration in place.”

The Public Interest Disclosure Act 2013 provided protection for officials, including contractors who wanted to report maladministration, the spokeswoman said.

## Draconian act enforces unhealthy silence

Letters to the editor  
*Sydney Morning Herald*  
5 June 2015, p. 16



Illustration: Alan Moir

The Border Force Act, designed to gag potential whistleblowers, forces doctors, teachers and others attempting to assist in detention centres into an invidious situation. Speak out and risk

two years imprisonment, stay silent and watch people suffer. With the “entrusted people” now silenced, rights and conditions for those in detention are also silenced.

Stop the silence, Tony Abbott.

**Janice Creenaune** Austinmer

Having read some of the unauthorised reports on conditions on Nauru, I have serious concerns about the Border Force Act. The act does not just provide protection for staff taking justifiable actions in immigration detention centres, it also potentially provides protection for thugs and sexual predators, among both detainees and detention centre staff. And it had bipartisan support.

**George Rosier** Carlingford

A quiet little article tucked away on page 12 informs that doctors and teachers working in our immigration “detention centres” could face jail for speaking out against conditions therein. This should be on page 1.

How has it come to this, that a citizen can face jail for alerting us to conditions that threaten the safety and health of people for whom we, via our government, are responsible? The history of recent years gives no confidence that any of our government departments will inform us of these conditions.

Since the Howard era we have seen the increasing promotion of ignorance (especially via certain media outlets), the instilling of fear, and the inciting of hatred in as many of the population as this cynical government can delude. And Labor has been depressingly complicit in this. To remain acquiescent in this is to risk putting ourselves in the same group as those who so energetically perpetrate these attacks on democracy and decent treatment of people.

This continuous and stealthy removal of the checks on our government puts us in a position where it is excusable to examine parallels from darker times such as 1930s Germany.

**Peter Thompson** Killara

As someone who has lived in the previous USSR, I shiver when I read, “Doctors and teachers working in immigration detention facilities could face up to two years in prison if they

speak out against conditions in the centres”. This is the beginning of a police state and very, very dangerous.

**Marty Morrison** Bardwell Valley

I have often heard the mantra “If you’ve got nothing to hide, you’ve got nothing to fear” put out by governments to justify their surveillance and data retention policies. Now, under the Border Force Act, doctors and teachers will face draconian penalties for speaking out about conditions in detention centres. The little information we already receive indicates that asylum seekers in these centres are often treated badly and their basic human rights often abused.

I just wonder, are our borders really much safer as a result of this type of treatment of asylum seekers and detainees? And if our government is so proud of what it’s doing in these centres, why is it trying so hard to hide its activities from the public?

**John Slidziunas** Woonona

If the banning of teachers, doctors and others from speaking about conditions in immigration detention centres isn’t yet another step towards totalitarianism, then what would be?

**Norm Neill** Darlinghurst

This government really is the limit. It is absolutely outrageous for a government to be attempting to criminalise ethical professional behaviour. To think that it is the very same government that not so long ago was loudly championing freedom of speech.

Why doesn’t it just go the whole hog and create a ministry of truth, then anyone critical of the government on any grounds whatsoever could be thrown into jail?

**Geoff Gordon** Cronulla



## Doctors must be allowed to speak freely

Nicholas Talley

*Sydney Morning Herald*

9 June 2015, p. 18



The damp, hot conditions on Manus Island have led to serious skin conditions and increased risk of vector-borne diseases.

AS A DOCTOR, my work is defined by examining the evidence and recommending the solution. This applies whether I’m treating patients as a gastroenterologist or advocating for change as the president of the Royal Australasian College of Physicians.

The evidence from Australia’s immigration detention centres is in. They seriously and irrefutably harm the health of children and adults who have sought our protection.

As a doctor, I cannot think of any other scenario in which my ability to speak freely about serious harms being inflicted on my patients would be restricted.

Refugees and asylum seekers have complex needs as patients. Their experiences in their countries of origin, as well as in fleeing persecution, often result in complex disease, malnutrition, and developmental issues and severe mental health concerns.

Our immigration detention policy takes these needs and exacerbates them.

We know that detention, particularly when it exceeds six months, leads to serious trauma. We know the damp, hot conditions in Nauru and Manus Island, in Papua New Guinea, have led to serious skin conditions and increased risk of vector-borne diseases. The reports of poor sanitation and open water sources dramatically increase the risk of disease. We have seen one death in Manus Island from sepsis from a cut foot. The statistics on mental health conditions in detention are shocking in both adults and children.



And why do we have this evidence? It's because my colleagues, dedicated physicians and paediatricians working in these centres to provide the health care the detainees so badly need, have been brave enough to speak out about the sometimes appalling conditions inside these centres.

Of course it would be better if doctors did not have to be there, that the centres would be closed, but while they remain open, it is my colleagues who deliver the medical support.

To date, they have spoken out in the face of confidentiality agreements which attempted to force their silence on return. Now, it seems, the government wants to jail them for speaking out.

The quiet passing into law late last month of the Australian Border Force Act is an attempt to further restrict the Australian public's access to the truth about conditions in the immigration detention centres.

This law actively restricts the dissemination of any information gleaned by staff or contractors (including medical staff) in the centres; a law which threatens up to two years imprisonment for any doctor (any person) who dares to disclose the reality of the conditions in the centre. While there are caveats to the restriction, including where someone considers it necessary to save "the life or health of an individual," it entirely forbids broader disclosure of information about conditions.

One of the most rewarding elements of my role as president of Royal College of Physicians is as the chief advocate for the college's work and priorities. I have made it a distinct priority of my term to use this platform to advocate for the best possible patient care, and often to give a voice to the needs of those who otherwise wouldn't be heard.

In that role, and as a doctor, I cannot think of any other scenario in which my ability to speak freely about serious harms being inflicted on my patients would be restricted. Indeed, I cannot conceive of any scenario in which such a restriction might be tolerated.

As doctors, the public relies on us to examine and reflect on what is best for our patients, and to speak up about any barriers to the best possible care.

I am appalled by this new law which will actively hinder us from learning and speaking the truth about harms inflicted on our patients. Urgent amendments must be passed to ensure appropriate protections for whistleblowers, and to allow doctors their full rights to advocate without threat of imprisonment.

The federal government needs to explain why it is intent on denying the Australian public the knowledge it deserves about the reality of the harms caused by this policy.

Nicholas Talley is the president of the Australasian College of Physicians.

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## Australia passes controversial anti-piracy web censorship law

**Based on a bogus justification, and easily circumvented using VPNs**

Glyn Moody

*Ars Technica*, 22 June 2015



A CONTROVERSIAL bill to allow websites to be censored has been passed by both houses of the Australian parliament. The Copyright Amendment (Online Infringement) Bill 2015 allows companies to go to a Federal Court judge to get overseas sites blocked if their "primary purpose" is facilitating copyright infringement.

Dr Matthew Rimmer, an associate professor at the Australian National University College of Law, points out that there is a lack of definitions within the bill: "What is 'primary purpose'? There's no definition. What is 'facilitation'? Again, there's no definition." That's dangerous, he believes, because it could lead to "collateral damage," whereby sites that don't intend to host infringing material are blocked because a court might rule they were

covered anyway. Moreover, Rimmer told *The Sydney Morning Herald* that controversial material of the kind released by WikiLeaks is often under copyright, which means that the new law could be used to censor information that was embarrassing, but in the public interest.

The bill passed easily in both houses thanks to bipartisan support from the Liberal and Labor parties: only the Australian Greens put up any fight against it. Bernard Keane explains in an article on *Crikey* that the main argument for the new law — that it would save Australian jobs — is completely bogus. Claims that film piracy was costing 6100 jobs every year don't stand up to scrutiny: "If piracy were going to destroy 6000 jobs in the arts sector every year, why is employment in the specific sub-sector that according to the copyright industry is the one directly affected by piracy now 31,000, compared to 24,000 in 2011?" Keane asks.

As well as being based on a false premise, the new law will also be ineffectual, since Australians can simply use web proxies and VPNs to circumvent any blocks that are imposed. This has raised the fear that the courts will go on to apply the new law to VPN providers, although Australia's Communications Minister Malcolm Turnbull has insisted this won't happen. According to Torrent-Freak, last week Turnbull said: "VPNs have a wide range of legitimate purposes, not least of which is the preservation of privacy — something which every citizen is entitled to secure for themselves — and [VPN providers] have no oversight, control or influence over their customers' activities." If Turnbull sticks to that view, it is likely that Australians will turn increasingly to VPNs to nullify the new law.

As Australian Greens Senator Scott Ludlam wrote today, the real solution lies elsewhere: "The government is ignoring the opportunity to work with content providers and remove the reasons for people currently accessing content through torrents and other sources. Just deliver content in a timely and affordable manner, and piracy collapses."

That's no mere theory: survey after survey shows that the approach is

already working elsewhere. It's a pity that the Australian government didn't pay more attention to those figures instead of the listening to the "foreign rights holders and lobbyists who have collectively donated millions of dollars to the Liberal and Labor parties," whom Ludlam claims have been the driving force behind the introduction of the new law.

## The sound of silence stifles our freedom

Elizabeth Farrelly  
*Sydney Morning Herald*  
11 June 2015, pp. 20–21



SO YOU think you're free to speak your mind? Think again. We are, all of us, increasingly bubble-wrapped in the sounds of silence.

Silencing the intelligentsia has always been totalitarianism's tool of choice. But there's only so much you can achieve with prisons and pig-farms. Now, as public intelligence shrinks to a hoarse whisper, it seems corporatised culture may succeed where more gun-pointed regimes have failed.

Silence is the sound of no hands clapping.

The mindless din that now passes for civil debate is generally attributed to populism of one kind or another — the internet, the market, democracy itself. But perhaps that's wrong. Perhaps the silence is coming from the top.

It's not just scholars and academics, increasingly silenced by ludicrous ad-

ministrative burdens, vanishing tenure, a casualising workforce and despair at the commodification of what we still call "higher" education. In a way, that's the least of it. Across journalism, politics, agriculture, medicine, law, human rights and teaching, the gags are growing in size, number and efficacy.

Watching the film *Citizenfour*, I was struck not only by Edward Snowden's lucid courage but by his misplaced confidence in the rest of us. Seeing his own disclosure as merely the first brick from a Berlin wall of silence, Snowden was touchingly certain that, once his bit was done, we'd all follow. We'd all take our stones of silence and chuck them at the jackbooted armies of spin, smugness and compliance.



How wrong he was. We watched in silence, seeing Snowden, Assange and poor little Bradley Manning as a race apart: heroic figures to be admired, but not emulated. Even the term "whistle-blowers" sets them apart, carrying with it our heartfelt hope not to be similarly called.

But they're not apart. They are all of us. Consider journalism. The sacking of SBS journo Scott McIntyre for his Anzac Day tweets was shocking on several fronts. First, I was shocked that Malcolm Turnbull — who first came to intellectual prominence for defending ex-spy Peter Wright's right to tell the truth — had so thoroughly changed sides.

Second, I was shocked that SBS would act on Turnbull's "offensive" tag. Third, that anyone in this country, but especially a journalist, could be sacked for voicing political opinion.

I was also shocked by the hypocrisy. It was SBS' own, very fine series *The Great Australian Race Riot* by Sally Aitken and Peter FitzSimons, that detailed just how racist and violent the World War I diggers were. Armed with guns, bayonets and flesh-shredding Gallipoli-originated 'jam-tin bombs', they formed thousands-strong vigilante mobs in Brisbane (1919), Broome (1920) and Kalgoorlie (1934) to "defend" loyal royal white Australia from the Russians, the Japanese and the Italian-Slavic communities, in Kalgoorlie burning 117 homes.

But most shocking of all was the casual response of others to my dismay. "Well duh," was typical. "Everyone has a social media clause. You try saying something offensive, see how you get on."

It's true. Professionals of all kinds now expect to be governed by social media clauses that specifically fetter their public opinions and sometimes even require public positive comment.

This is terrifying. It's like your boss has the right to advertise on your house — only worse, because it's inside your head. It is thought-police territory and its ultimate effect is blanket self-censorship, where the threat barely needs to be explicit because an entire generation of young professionals has internalised its norms and accepted its dictates.

And even that's just the tip of it. There's the government's tireless bullying of Human Rights Commissioner Gillian Triggs for her staunch public defence of both asylum seeker rights and the rule of law, pretending that she's the one playing politics, although both roles fall within her job as commissioner and her duty as a citizen.

There's the truly sinister Border Force Act. Slipping unseen through parliament last month, it threatens doctors, teachers and other contractors assisting detained asylum seekers with two years' jail if they speak publicly about conditions there.

As the government rhythmically repeats, the innocent have nothing the fear from scrutiny. So what exactly on

Manus and Nauru are they are so desperate to hide? Are the tales of children being passed around “like packets of cigarettes” actually true?

There’s also the “ag gag” legislation currently before Senate. Disguised as an “Animal Protection” amendment to the Criminal Code, this bill is in fact designed to intimidate protesters. It gives individuals who record anything they regard as animal cruelty one day to report it — regardless of whether the cruelty is real or the law known to the person — or face a \$5100 fine. This can only exacerbate the animals’ plight.

There’s the huge, 12-nation Trans-Pacific Partnership agreement, so powerful it will let US tobacco corporations sue Australia for loss of “expected future profits” from plain packaging rules, but so secret even our governments can’t tell us about it, and we know this only via Wikileaks.

And there’s the application of this same knee-jerk secrecy to city-making, where even with ultra-public buildings like the Opera House, treat the public as the enemy — as in the cloak-and-dagger design competition for a Visitors Centre on the forecourt, where none of the schemes, including the winner (by Rachel Neeson) were ever made public.



None of this is legitimate. It’s not commercial-in-confidence. It is rule-by-ignorance, and in excluding from public debate everyone of knowledge, insight or learning it turns democracy into an emotive bloodbath run by spin-merchants and rabble-rousers.

It’s as though we have all tacitly accepted the government’s view that “the media” is a bad and scary domain, where be dragons. Say what you will in private, but speak not your mind in public, ye citizens, for fear of — what? Enriching the democratic debate? Improving government? Making political progress? Heaven forbid.

We can’t afford this. We need democracy to work with intelligence and rich collective imagination. To speak freely in public is not just a right; it is a duty that should be constitutionally enshrined. Contractual gags should be banned. Silence is the sound of no hands clapping.

## Members of Education Department lunch club had little fear of audits

**The few brave women who tried to blow the whistle were sidelined into meaningless jobs, vilified or made redundant.**

Richard Baker and Nick McKenzie  
*The Age*, 3 May 2015



Jeff Rosewarne leaves an IBAC hearing  
Photo: Vince Caligiuri

At the very heart of the corruption scandal now ripping apart Victoria’s Education Department was a small group of senior men who regularly met for lunch.

Standing against the lunch club, or trying to, were a few brave women who tried to draw attention to the scandal; to blow the whistle on how hundreds of millions of taxpayer dollars were flowing out of the state’s most disadvantaged schools, and into the pockets of the mates and their families.

But when they raised their voices in protest, the women were pushed into meaningless jobs, vilified or even made redundant. They face a significant problem: the person in the hierarchy they were supposed to report their concerns to was Jeff Rosewarne — the Education Department’s deputy secretary, and the convener of the lunch club.

“If you were a woman, over 45 and asked questions, you were out,” said one former senior woman official, who

has asked not to be identified on the basis she may be called as a witness by the Independent Broad-based Anti-Corruption Commission.



Nino Napoli

“It was a boys’ club, a ridiculous culture. If an audit found something that was not right, nothing seemed to happen.”

If measured by its control of money and jobs, this little cabal was among the most powerful in Melbourne. But until this week, few Victorians would have heard of the participants. Nor would they have known that the men had the power to make or break the careers of many of the state’s school principals, or decide if an education program should be funded or not.

The club’s most important members were Victorian Education Department deputy secretary Mr Rosewarne, school finance boss Nino Napoli and, to a lesser extent, regional director John Allman.

Their relative anonymity outside education circles was obliterated in dramatic form over several days last week, when a major IBAC inquiry exposed a series of allegedly corrupt and criminal activities by the men, led by Mr Napoli.

The inquiry has, in the manner of many publicly staged corruption exposes, included gruelling public examinations, phone taps, seized documents, bugged cafes and surveillance photos.

On the first hearing day, Mr Rosewarne’s reputation was shredded and the public learned Mr Napoli had been sacked. Day three brought Mr Allman’s sacking. By day five, IBAC had thoroughly exposed the way Mr Napoli and Mr Rosewarne used public funds to buy wine, overseas travel and expensive homewares.

All three now face the prospect of serious criminal charges. Two primary school principals implicated in the corruption scandal have been suspended.



Mr Napoli and Mr Rosewarne also used their powerful departmental positions to shut down anyone who dared question whether they were up to no good.

In coming weeks, IBAC will unveil a further web of alleged corruption involving millions of dollars meant for schools being allegedly used to enrich Mr Napoli and some members of his extended family, and to fund Mr Rosewarne's family travel and drinking habits.

One Education Department source who is closely watching the hearings and whose education program was denied funding by Mr Allman told *The Sunday Age*: "Every child at a state school has been betrayed in the most fundamental way.

"Perhaps what saps the morale of the sector the most is that so much of the fraud was done at the expense of disadvantaged children. These entitled men were drinking, partying, holidaying and setting up their homes and families whilst disabled, disadvantaged children and families were falling through the widening gaps in education provision."

Bendigo Senior Secondary College principal Dale Pearce, who is on several departmental committees, said people in the education sector were shocked by the IBAC revelations.

"There appears to be a range of activity going on in that you wouldn't dream of engaging in at a school level," he said.



Not the Victorian Education Department lunch club

Mr Pearce stressed that the conduct exposed was not indicative of a culture of largesse in state schools, which he said often struggled to find resources.

"We would have no reason to suspect that this sort of behaviour was occurring. We were aware there were Christmas parties and functions, but it

always seemed they were above board," he said.

But not everyone was in the dark. *The Sunday Age* can reveal that long before IBAC got its teeth into the men of the Education Department, some of their colleagues tried to blow the whistle on alleged corruption.

Several women who have held senior positions in the department claim they were made redundant, pushed into meaningless jobs and vilified when they tried to raise integrity issues. Two sexual harassment claims against a former top male official yet to appear before IBAC, who was also a member of the men-only lunch club, also allegedly went nowhere.

Standing in the way of the women was Mr Rosewarne, the department's deputy and then acting secretary, and his friends. Each time women, particularly those in the audit, purchasing and finance areas of the department, began to question the so-called "banker schools" where Mr Rosewarne, Mr Napoli and Mr Allman hid money, or how alcohol or trips were being paid for, they were shut down.

One former senior official said "all the women who blew the whistle were sent for counselling". She described one instance where several top women found themselves relocated to the same office away from the department's Treasury Place headquarters after raising concerns.

"You were excluded from meetings, removed to other buildings and left to rot," she said.

IBAC heard this week that it took eight months for Mr Allman to sign off an internal 2010 audit that found the department's system of diverting millions of dollars into select "banker schools" was unlawful and presented a high risk of fraud. Despite its serious findings, the audit went nowhere.

In another case, Fairfax Media last year revealed that Mr Rosewarne had not acted on a secret report to him that revealed four of the department's top officials, including Mr Allman, had bought shares in a technology company chosen to build the ill-fated Ultranet IT system.

Another woman who worked in the department's accredited purchasing unit tried to raise concerns about the

use of corporate cards by senior officials, such as Mr Rosewarne, was allegedly told by Mr Rosewarne that her job was to be "restructured". She went on leave and was then seconded to another government department.

"It was all lunches and mates. I was told once by Nino [Napoli] that I had to select a certain company for a tender because Jeff [Rosewarne] had made a promise in a corporate box at the AFL," she said.

Yet another woman who worked closely with Mr Napoli for years said it was well-known that banker schools were being used inappropriately when "you wanted to pay for something on the quiet so there was no trace at head office."

"If you asked questions you were told you were not a team player," she said.

Mr Pearce said he expected — and would welcome — major reforms following the IBAC hearings.

"Schools will be hammered with a much tougher regime of probity. This has already been signalled to schools. Schools need to be much more alert to risk associated with dealing with contractors, employment of family members and acting for personal gain," he said.

Before any reforms are announced, the lunch club members have weeks more scrutiny to endure. Mr Rosewarne, who is on leave from his job as a director of the Catholic Education Office, has claimed he did not recall departmental monies being used to pay on behalf of the lunch club.



He also denied knowing companies associated with Mr Napoli and his

family had been receiving large departmental and school contracts since the mid-1990s, despite several invoices from these companies being addressed to him.

Mr Allman told IBAC he had met members of Mr Napoli's immediate family, but was unaware of any commercial links to the department until he was questioned by IBAC investigators.

Those denials are likely to be subject to scrutiny when the lunch club's founding member, Mr Napoli, finally takes the IBAC witness stand.

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## Everywhere in chains

Nick Davies unpicks the myth of press freedom in Britain.

*New Internationalist*

January/February 2015, p. 22



The British press was born free but it is everywhere in chains. Some of those chains are financial. As the internet takes away our readers and advertisers, news organizations struggle to find the money to pay for basic news gathering and even more so for long, complicated investigations. Instead, they lapse into recycling PR and propaganda served up in neat packages by governments and corporations.

Other chains are political. In every limb of the British state, the activity of the public sector is concealed by a blanket of official secrecy which is enforced by politicians and which means quite simply that civil servants, police officers, care workers and others are banned from talking to reporters. We are expected to take our information from their press officers.

But the tightest chains are legal. That culture of official secrecy is reinforced by an Official Secrets Act which can be wheeled out to prosecute whistleblowers from the state. David Shayler, for example, worked for the internal security service, MI5, and went to a journalist to expose incompetence in its operations against IRA

terrorists. He was chased across Europe, jailed in Paris, brought back to London and jailed again. The message to other whistleblowers was chilling and clear.

If the British criminal law can be harsh, the civil law can be even more oppressive. When Julian Assange and I first agreed to set up the alliance of newspapers which published the secrets which had been given to Wikileaks by Chelsea Manning, we immediately decided to involve *The New York Times* as a kind of escape route from the British courts. The US courts generally will not allow "prior restraint" of material which news organizations intend to publish. In London, by contrast, it was clear that the US could go to court, use the magic words "national security" and obtain an order to prevent the *Guardian* or any other British outlet from publishing.

Similarly, when representatives of British intelligence indicated that they were going to come to the *Guardian's* office to physically destroy laptops on which we had stored some of the material which we had been given by Edward Snowden, the editor, Alan Rusbridger, took the precaution of ensuring that *The New York Times* had a copy of the material.



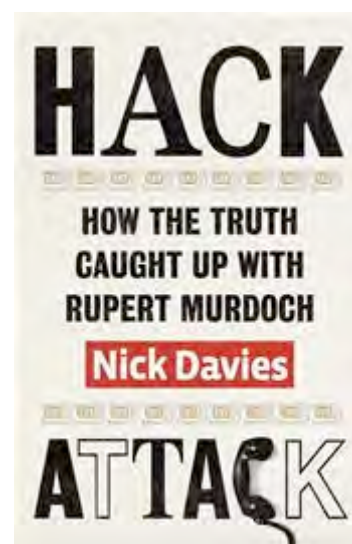
Britain is globally famous for its libel laws. They are almost useless for most genuine victims of media aggression because they are so insanely expensive to enforce. But they are highly effective instruments of suppression for the rich and powerful who can afford them. Crucially, they mean that it is not enough for British reporters to publish the truth: they also have to be able to prove it in open court, which is out of bounds for the kind of off-the-record sources who so often provide the most important information. And if a British reporter happens to make a

mistake, he or she can expect to be punished with hundreds of thousands of pounds worth of legal costs and damages.

Our contempt of court laws are equally restrictive. I became a reporter because of the Watergate scandal, which began with the arrest of burglars inside the Democrat party's office. In the US, their brief appearance in court the next day gave reporters a way into the story. In Britain, it would have closed the story down: we're in contempt of court if we publish anything that could prejudice an upcoming trial.

All whistleblowers take risks. In Britain, those risks are particularly clear. Those who succeed tend to do so by seeing their role as a political one and coming out openly at some point so that they can become the focal point for a political campaign which can succeed (sometimes) in persuading the state not to wrap them in the legal chains which are so readily available.

Nick Davies is an award-winning investigative journalist and documentary maker. His most recent book, *Hack Attack: How the Truth Caught Up with Rupert Murdoch*, was published in 2014.

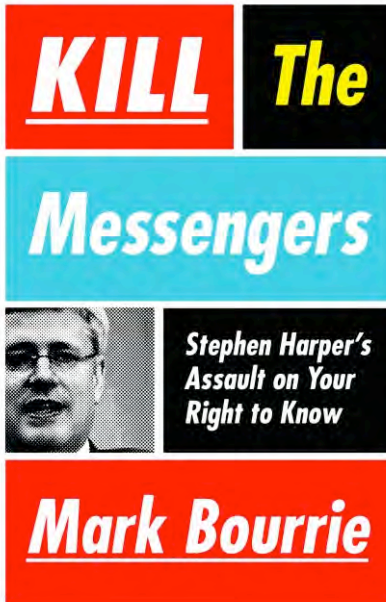




## Kill the messengers

Mark Bourrie

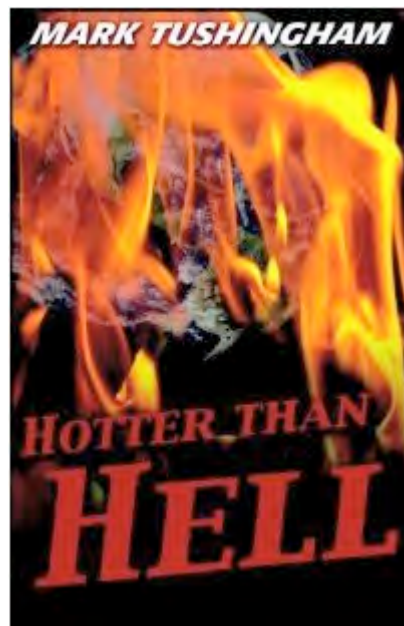
Extracts from Mark Bourrie's book  
*Kill the messengers: Stephen Harper's  
assault on your right to know*  
(Toronto: HarperCollins, 2015),  
footnotes omitted



LIKE MOST OTHER EXPERTS employed by the federal government, scientists have been gagged by strict rules laid down at the Centre. The Prime Minister's Office has crafted an information control system that ensures no one in the government speaks without permission. Tory politicians and the public servants in the bureaucracy can't do media interviews unless the Prime Minister's Office approves the Message Event Proposals that lay out the content of the interview, the length, and the visuals that may be used.

Until 2007, reporters could simply call up scientists. Usually scientists were interviewed after they had published a paper about a discovery they'd made. But starting that year, according to respected Postmedia writer Margaret Munro, one of the handful of Canadian journalists who specialize in science, the system changed. Environment Canada started ordering scientists to refer media enquiries first to government media handlers — people who were not scientists — who would help write responses to the questions.

Scientists say these rules have muzzled them. Their complaints began when Environment Canada climatologist Mark Tushingham booked the National Press Theatre in Ottawa, which is operated by the Parliamentary Press Gallery, for the launch of his novel *Hotter Than Hell*. Harper's officials told Tushingham to cancel the event, even though *Hotter Than Hell* — which is based on the idea, unpopular in Tory circles, that climate change is caused by humans — is a work of fiction.



In March 2012, the journal *Nature*, one of the world's most prestigious science magazines, came down on the side of the muzzled scientists. In an editorial, *Nature* told of the problems faced by its own reporters who had tried to write about Canadian science policies. Since President George W. Bush left office, the United States had reversed many of his restraints on government-employed scientists. At the same time, Canada had tightened them. "The Harper government's poor record on openness has been raised by this publication before ... and *Nature's* news reporters, who have an obvious interest in access to scientific information and expert opinion, have experienced directly the cumbersome approval process that stalls or prevents meaningful contact with Canada's publicly funded scientists," the editorial said. "Policy directives and emails obtained from the government through freedom of information reveal a

confused and Byzantine approach to the press, prioritizing message control and showing little understanding of the importance of the free flow of scientific knowledge."

Scientists at the American Association for the Advancement of Science's annual conference in Vancouver in 2012 signed a letter to Harper asking the prime minister to let federal scientists speak. They said they were proud of their work. "Why are we suppressing really good news to Canadians, that is, successful science being done in federal government labs?" Andrew Weaver, a climate scientist at the University of Victoria, said during the session. "Why don't we open it up? There's nothing to fear but success." The letter that the scientists drafted was short. In part, it said: "Despite promises that your majority government would follow principles of accountability and transparency, federal scientists in Canada are still not allowed to speak to reporters without the consent of media relations officers."

At the same conference, science journalist Margaret Munro told scientists about reporters' frustration in January 2011 when flacks wouldn't let them interview Kristin Miller, a biologist with Fisheries and Oceans Canada. Miller was the lead author of a study published in the journal *Science* that examined the decline of salmon stocks on the west coast. At first, media handlers in the fisheries department had told reporters that they could talk to Miller. Harper's department, the Privy Council Office, stepped in and blocked all interviews. The prime minister's communications wizards said they were worried Miller might say something to influence the ongoing judicial inquiry into the decline of sockeye salmon in the rivers of British Columbia.

A few months earlier, reporters tried to interview Edmonton-based Environment Canada researcher David Tarasick about the things he'd found while researching the state of the hole in the ozone layer above the Arctic. Tarasick's article "Unprecedented Arctic Ozone Loss in 2011" was published in *Nature*. Tarasick found one of the largest ozone holes ever discovered above the Arctic, covering two million square kilometres. He



warned that the ultraviolet light that penetrates the atmosphere through the ozone hole is a threat to plants and animals. Predictably, the *Nature* article got a lot of attention from the world's media.

Media handlers in Tarasick's own department gagged him for two weeks, until reporters either found other sources to talk about the problem or lost interest. When a Canadian reporter asked for an interview, Tarasick wrote back in an email: "I'm available when Media Relations says I'm available."

Media Relations was no more helpful. "While an interview cannot be granted, we are able to provide additional information on the paper ... You may attribute these responses to Dr. David Tarasick, Research Scientist, Environment Canada." The department, it seems, wanted to interpret the scientist's findings and write them into its own words, then put those words into Tarasick's mouth.



David Tarasick

Documents released under the Access to Information regime show everyone was in the information loop except Tarasick. Spin strategy went all the way up the information food chain to the assistant deputy minister. One of the media handlers told Tarasick, "I just I wanted to let you know that proposed responses are with the ADM [assistant deputy minister] for review right now." Apparently not having had any involvement with the preparation of the proposed responses, Tarasick replied to his handlers, "I haven't given you any proposed responses." So whatever the spinners were giving out,

it wasn't science, and it wasn't written by anyone who had anything to do with scientific research.

Although then Environment Minister Peter Kent said in the House of Commons, "We are not muzzling scientists," Kent told a parliamentary committee that "circumstances simply did not work out" to allow Tarasick to give interviews about his ozone hole study. Whatever circumstances were at work, none of them seemed to involve Tarasick, who was more than willing to chat.

Tarasick couldn't talk because, just after Harper won his majority, the Prime Minister's Office, in an effort to control the environmental message, had made it clear that loyal communications wizards would decide what information went out of the Environment Ministry. In most cases, it turned out, there would be a written response to media questions crafted by grads of journalism schools and veterans of Tory campaigns, rather than the words of scientists. Previously, reporters had simply called up scientists to ask about their work. (pp. 185–189)

By the sixth year of the Harper regime, most scientists knew it was foolish and dangerous to try to buck the system. The *Index on Censorship* took a survey of four thousand Canadian scientists in 2013. Only 14 per cent said they felt they would be able to share a concern about public health and safety, or a threat to the environment, without fear of retaliation or censure from their department or agency. (p. 192)

WHILE CSIS [Canadian Security Intelligence Service] and the RCMP [Royal Canadian Mounted Police] don't give opponents of the Harper government the full bare-light-bulb-and-electrodes secret police treatment, Ottawa does have ways of making their lives miserable. For one thing, they can audit critics' tax returns, take away any charitable status and intimidate donors. Normally, the Canada Revenue Agency audits about 10 per cent of the country's charities, about eight hundred groups, every year. Under Canadian law, charities can't use more than 10 per cent of their money for advocacy or politics. Those charities that can't give tax deduction receipts have a very hard time raising money.

In the 2012 budget, Finance Minister Jim Flaherty set aside \$8 million to pay for extra audits of environmental groups to determine whether they should be stripped of their charitable status. If they lost that status, the environmental groups would no longer be able to issue tax deduction receipts to donors, which would severely hurt their ability to raise money. The audits targeted the David Suzuki Foundation, Tides Canada, West Coast Environmental Law, The Pembina Foundation, Environmental Defence, Équiterre, the writers' group PEN Canada and Ecology Action Centre. Also targeted were OXFAM and Amnesty International, two foreign aid groups that many Tories consider too left-wing. (p. 219)



A bee die-in protest in Chicago, 2014: worth spying on?

Enemies of the state take all kinds of forms. Recently, Canada's spies turned their attention on people protesting the disappearance of bees. The Global Operations Centre, a little-known spy group run by the prime minister's staff, watched the Bee Die In, held the same day as the speech from the throne in October 2013 [Governor General's speech opening parliament]. Agents took notes as people dressed as bees and flowers pretended to die on the front lawn of the Parliament Building, hoping to draw attention to the worldwide loss of pollinators. It was one of five protests that day that the operations centre spied on. The information on the dead bee people was shared with U.S. intelligence agents. The other protests were a First Nations Day of Action, an Idle No More protest in Ottawa, and two shale gas protests in New Brunswick.

And, of course, there are the government's own employees, who, by the nature of their work, have the data and the expertise to do serious damage

to the Harper government. In March 2014, the federal cabinet imposed a lifelong gag order on bureaucrats and lawyers working in sensitive government departments. Most of the gagged public servants work, or have worked, in the Department of Justice and the Privy Council Office. They face up to fourteen years in prison if they ever talk about their work.

"The practical implication of this is that it puts a terrific chill on the possibility of drawing on practitioner expertise, particularly the retired practitioners, to contribute to any kind of debate on intelligence and security matters in Canada if people followed the letter of the law," Wesley Wark, a University of Ottawa professor and one of Canada's leading experts in national security and espionage, told a *Toronto Star* reporter. He said Canada needs "those voices more than ever" since 9/11 and the revelations of out-of-control spying, wiretapping and computer hacking revealed by Snowden and other whistle-blowers.

"Special operational information," which can never be shared with the public, is loosely defined in this federal law as the identity of persons or groups approached as confidential sources by police or security agencies, Canada's plans for military operations, the country's methods for collecting intelligence, the target of any investigation, or the identity of spies. But it also includes "information or intelligence similar in nature" to those categories received by or relating to any foreign entity, such as the NSA.

"The security and intelligence community has certain operational requirements that need to be respected," a government notice of the new rules said. "[This] order enables the Government of Canada to provide additional assurances to its international partners and allies that special operational information shared with Canada will be protected." This suggests the regulation was made at least partly because of Canada's intelligence commitments to the United States and other allies, especially in the wake of the 2013 sentencing of Sub-Lt. Jeffrey Paul Delisle, a former naval officer based in Halifax, and Ottawa, for selling state secrets to the Russians. He was given a twenty-year sentence.

The government tabled documents in the House of Commons showing that in its first six years in office it made at least forty-four requests to website-hosting companies to take down content from the Internet and to wipe the material from Google's search engine. Almost all of those requests were made between 2010 and 2012. The Department of National Defence made the largest number of these demands. Some seemed reasonable. The government asked Facebook to take a federal logo off of a page set up by supporters of a federal prisoner. It also tried to protect information about people who were applying for refugee status. Those files normally weren't available to web surfers, but smart users of Google could extract them. Some other requests seemed more political. For example, Environment Canada demanded the removal of two Netelligent parody websites that spoofed the department's own site. "I think what we are seeing is that the departments are becoming increasingly politicized," New Democrat MP Charlie Angus said. "They are being run by the 20-some-year-olds who are the political shock troops of the prime minister."

Plumbers, ratfuckers, whatever they're called in Ottawa these days, they're always on the hunt for people who spill the government's secrets or show signs of disloyalty. The Tories were big friends of whistle-blowers when the Liberals were in power. Now they're treated as enemies of the state. Whistle-blowing has become so commonplace that there's now an organization, FAIR, that gives aid and comfort to those who come forward from the ranks of the public service and from corporate offices to expose corruption and stupidity.

Still, some whistle-blowers fight on. In 2012, Department of Justice lawyer Edgar Schmidt challenged his own department in Federal Court. He had been a whistle-blower who revealed details about the guidelines used by federal lawyers to draft legislation. Schmidt, who had been writing parliamentary bills for a decade, said lawyers in the Justice Ministry knew some of these bills violated the Charter of Rights, but the government did not warn Parliament. Schmidt took his worries to the top lawyers and execu-

tives in his department. Unsatisfied with their responses, he filed a court case.

As soon as Schmidt came forward, he was suspended without pay. The government argued that Schmidt violated solicitor-client privilege. The suspended lawyer said in court, "It's my position that solicitor-client privilege is never available to protect illegal instructions."



Edgar Schmidt

"The day after the filing of this statement, bang: 'You're suspended'," Federal Court judge Simon Noël noted after each side made its case in Schmidt's wrongful dismissal lawsuit. The judge said the federal government had stripped sixty-year-old Schmidt of his income and, probably more importantly for a lawyer, his good reputation. "It's unbelievable," Noël told the government's lawyer. "Your client has done everything it can to kill this thing. The court doesn't like that ... We see that in different countries and we don't like it ... Canada is still a democracy."

The Harper government would soon show how it felt about courts that get in the way of its plans. (pp. 281-284)

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## Whistleblowers Australia contacts

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**Postal address** PO Box U129, Wollongong NSW 2500  
**Website** <http://www.whistleblowers.org.au/>

### New South Wales

**“Caring & sharing” meetings** We listen to your story, provide feedback and possibly guidance for your next few steps. Held by arrangement at 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, Balmain 2041. Ring beforehand to arrange a meeting.

**Contact** Cynthia Kardell, phone 02 9484 6895, [ckardell@iprimus.com.au](mailto:ckardell@iprimus.com.au)

**Wollongong contact** Brian Martin, phone 02 4221 3763.

**Website** <http://www.bmartin.cc/dissent/>

**Queensland contacts** Feliks Perera, phone 07 5448 8218, [feliksfrommarcoola@gmail.com](mailto:feliksfrommarcoola@gmail.com); Greg McMahon, phone 07 3378 7232, [jarmin@ozemail.com.au](mailto:jarmin@ozemail.com.au)

**Tasmania** Whistleblowers Tasmania contact, Isla MacGregor, phone 03 6239 1054, [opal@intas.net.au](mailto:opal@intas.net.au)

**Schools and teachers contact** Robina Cosser, [robina@theteachersareblowingtheirwhistles.com](mailto:robina@theteachersareblowingtheirwhistles.com)

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Thanks to Cynthia Kardell for proofreading.

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## Whistleblower apps

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On pages 7 to 9 are two stories about whistleblower apps. An app or application is a computer program, and can be thought of as an electronic tool. Like any tool, care is required in both choosing and using it.

There's a risk in assuming that an app provides safety in whistleblowing. The apps described in the articles give the promise of maintaining anonymity. Using a good app is just one part of achieving this.

I'm very much in favour of leaking — and remaining anonymous — whenever possible. This is because revealing your identity opens you to reprisals. Furthermore, as soon as your identity is known, your access to information will be cut off. In addition, the reprisals turn the story into one about you and your motives and supposed failings, and not about the matter you spoke out about. In contrast, by remaining anonymous you can avoid reprisals, maintain access to information and keep the focus on the problem.

However, remaining anonymous is not easy. You have to be able to keep a secret — namely that you are a leaker — and not everyone can do this. You need to ensure there is no electronic trail that can lead back to you. For example, if you leak to a journalist, the police can use the new data retention laws to look through the journalist's telephone records. If you used your phone to ring the journalist, you will become a candidate for further scrutiny and investigation. If you anticipated this possibility, you might have decided to use a public phone or perhaps Skype from a library computer.

The key thing is to think ahead to how you might be tracked down, and avoid methods that provide revealing clues. You need to be careful in choosing which documents to leak, in the way you present yourself to co-workers, in text that you write, and in who you decide should receive your leaks. It's not easy, but there are great benefits. For more information, see “Leaking: practicalities and politics,” <http://www.bmartin.cc/dissent/documents/rr/leaking.pdf>

Brian Martin

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## Whistleblowers Australia membership

Membership of WBA involves an annual fee of \$25, payable to Whistleblowers Australia. 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, [feliksfrommarcoola@gmail.com](mailto:feliksfrommarcoola@gmail.com)*