The Whistle

Newsletter of Whistleblowers Australia Inc
PO Box U129 University of Wollongong, Wollongong NSW 2500

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Note: The text of most but not all items in the June 1996 issue are included here. The order is not the same and some typographical errors have been rectified.

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From the National President

Recently I was contacted by some members of WBA with concerns about confidentiality of statements made and documents given to other members. There are some serious issues here. I present here my own views in order to encourage discussion. I expect that others will have different perspectives and experiences.

When we are discussing issues and cases with others, often there are things we would not want to be widely known. This can be when talking with someone over the phone, when discussing points at a meeting of whistleblowers or when giving or receiving documents. It is convenient to distinguish between giving information and receiving it.

Giving information

If you have information that you want to remain truly confidential, my advice would be not to tell anyone else at all. There are no guarantees otherwise. If you talk on the telephone, it is possible (though in most cases quite unlikely) that it is tapped. If you talk at a meeting of people, it is possible that one of the others may be an informer. If you give documents to someone, it is possible that they will show them to someone else or that they'll be stolen. Even ABC journalists have had their offices raided by police in order to find the identity of their sources.

Whenever we communicate with others, we put a certain amount of trust in the others to deal with the information in an appropriate way. We have to use our judgment in this. In my view, most people are trustworthy most of the time, but we can never be sure.

The use of surveillance and informers is a serious matter, but often the power and insight of organisations that spy is overrated. Studies of files in so-called "intelligence agencies" show they are filled with wrong and misinterpreted information. There are dangers from surveillance, but even more debilitating can be a constant fear of being spied upon.

Violations of confidentiality are more likely to occur due to ill-judged actions made with the best of intentions, or just simple slackness. For example, someone receiving a confidential document might show it to a spouse or good friend only to find that the information is passed on to others. Or the document might simply be left on a shelf where others happen to see it.

We might like to think that whistleblowers, especially members of Whistleblowers Australia, are especially trustworthy, but there are no guarantees. If you're worried about whether someone can be trusted, find out from others how that person dealt with other cases.

Whistleblowers Australia is made up of volunteers. We have no resources or mandate to investigate people to see if they are bona fide whistleblowers. Members and others who attend meetings have to use their judgment about what they say to others. If in doubt, seek advice by talking to individuals first.

Generally, if whistleblowers have information that is relevant to the public interest, then the more people who know about it, the better. That's why media coverage about corruption is so powerful and so

detested by politicians, top bureaucrats and the like. Rather than becoming preoccupied with secrecy and confidentiality, in my view the aim should be more on getting information to people who need to know about it - which often means the general public.

Receiving information

How should one deal with information received from someone else? There are a host of considerations to be taken into account. Probably we could learn a lot from investigative journalists. Rather than making general recommendations, here I'll describe the way I proceed, simply as an example of one approach to the topic.

Since the late 1970s people have been giving me information about suppression off dissent. Sometimes I receive a verbal account, sometimes a letter and sometimes documents, from a page to a big pile. If the documents have already been published - such as in a newspaper - then issues of confidentiality seldom arise.

* Sometimes a person gives me material just so I will know about it, without any wish that anything be done. In such cases I simply read the documents to gain insight into what's going on and then file them away, or return them if requested.

* Sometimes a person wants advice on how to proceed. I try to oblige and then file or return any documents.

* Sometimes a person is willing for their case to be written up. Sometimes I suggest they contact a journalist or, with permission, pass their materials to a journalist. Other times I write up the case myself, often as part of a longer article. In working on an article, I seldom rely on verbal accounts alone; documents are essential.

First I write a draft and send it to the person concerned. In the case of an article mentioning several cases, I send the draft to all those mentioned who might be worried about how I've expressed matters. This isn't just a matter of courtesy - I want what I write to be as accurate as possible.

Usually I put a statement to the draft saying, for example, "Draft only. Not for quotation or distribution, please." If there are a lot of changes to be made, I may circulate a second draft. Only after I'm confident that the writing is accurate will I send it to a newspaper, magazine or book publisher.

Sometimes it's useful to send a draft to people on the "other side", namely those allegedly suppressing dissent. Before doing this, I always check with anyone who might be hurt by doing this.

Occasionally I think it would be useful to pass documents to someone else. Before doing this, I ask permission from the person who gave me the documents, at least if I think there is any reason to worry. If the person concerned has been giving copies to lots of people, then I'm less likely to worry.

Over the years, as I've gained experience, I think I've improved my ability to make judgments about how to deal with information. But no one can be perfect, since it's impossible to be sure what's going

on or how people will react. Sometimes I make mistakes. I try to be careful, but on the other hand it's possible to be too careful. To get something published, at some point it's necessary to go with what's as accurate as possible up to that point. Otherwise I'd be waiting forever for perfection.

I'm interested in hearing what others think about these issues. Should WBA have a policy on confidentiality? Should we produce a leaflet about it, to give to new members? If so, what should it say? Issues of confidentiality, openness and the like will be especially important at the conference in Melbourne, where there will be lots of whistleblowers, lots of people who aren't whistleblowers but who are sympathetic, a number of journalists and probably some people who are unsympathetic. It will be a great opportunity to share experiences and insights. My advice would be to be open about what you are willing for anyone to hear and to provide confidential material only to those you have good reason to trust.

Good reading from Senate committees

If you're in the mood for reading about whistleblowing, I recommend the two recent Senate reports. They are available from AGPS (government) bookshops. As well, a limited number of copies are available at no cost. Simply ring Elton Humphrey at Parliament House in Canberra (06-277 3005) and ask for them to be sent to you, or write (Elton Humphrey, Department of the Senate, Parliament House, Canberra ACT 2600). The reports are:

* In the Public Interest, Report of the Senate Select Committee on Public Interest Whistleblowing, August 1994;

* The Public Interest Revisited, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995.

If reading these isn't enough, you can ask for copies of all the submissions made to the two enquiries. Quite a number of our members made submissions to these inquiries and are featured in the reports. To me, the report on unresolved whistleblower cases seemed to provide more than enough evidence to show that the official channels almost never work. Some of the responses and non-responses of the official bodies are truly amazing.

Brian Martin

THE KINGDOM OF COVER-UPS

When the latest scandal
broke in the kingdom, subjects
received the usual, predictable
reassurances from the authorities:

There will be no 'cover-up'
there would be a full 'investigation'
of all parties without fear
or favour, status or position...

Countless agonising months later
after eternities of interrogations
of reporter, victim and complainant
the File, we're told, remains Open.

There have been no arrests
for a lack of material evidence;
but the investigative reporter
is on Notice of suspension;

The civic-minded complainant
faces multiple charges of defamation;
and the victim placed under
'police protection' i.e. detention.

Meanwhile our VVIP accused
still enjoys his perks and position
and has been judiciously advised
to take an extended vacation!

By CECIL RAJENDRA
From Infoline journal of the Bar Council of Malaysia, February 1996

FORUM: WHO DO PROTECTED DISCLOSURE LAWS REALLY PROTECT?

(From *Corruption Matters*, April/May 1996, Number 2. published by the ICAC.)

Dr William De Maria has analysed local and international whistleblowing laws from his perspective as a lecturer in social work and social policy, founder of the Queensland Whistleblower Action Group and principal researcher with the Queensland Whistleblower study.

Following is a review of an article, "Whistleblowing", by De Maria published in the Alternative Law Journal (Vol 20, No 6, December 1995). The article is a comprehensive critical review of public interest disclosure laws in Australia and New Zealand.

The table accompanying this review is adapted from one published with the "Whistleblowing" article in the *Alternative Law Journal*, and is reproduced with permission.

Limits on disclosure

De Maria argues that the qualifications that Australian and New Zealand legislation place on whistleblowers are extremely limiting.

The pathway that the whistleblower searching for justice and protection must walk are exceedingly restrictive in all the legislative schemes. Protection is usually contingent upon good faith disclosures to government authorities deemed appropriate in the legislative schemes.

The schemes are clearly more about state control of dissent than about the correction of wrongdoing and the protection (and indeed, affirmation) of whistleblowers. In a very real sense, the state, through these legislative instruments, has the whistleblower process sewn up. It alone defines whistleblowing, it alone lays out the pathways of disclosure, and it alone regulates the remedies available.

Making protection contingent upon the whistleblower obeying official reporting procedures, says De Maria, is an indication of official paranoia at what persistent whistleblowers could do - "Domesticated dissent is the undeclared goal of whistleblower legislation".

Are the laws wide enough?

De Maria is critical of whistleblowing laws which fail to acknowledge the role of private citizens. According to him, "If one had to chose a single litmus test to demonstrate a government's genuine intention to eradicate systemic wrongdoing and protecting whistleblowers, it would have to be whether the legislation extends into the private sector.

He is optimistic that private sector coverage will soon be a reality, as the argument for such an extension is powerful one. He points out that the traditional interface between the public an private sector is becoming increasingly confused, with the private business sector beginning to offer traditional "government" services on a more regular basis. The public sector is also moving more towards a private sector model of operation by increasingly aligning performance with profit.

Media protection

All whistleblowing schemes fail to adequately acknowledge the role of the media, according to De Maria. He describes protection for whistleblowers who choose to release information via the media as "the big no go area for the drafters of whistleblower legislation in Australia and New Zealand". Only the NSW legislation offers protection under certain circumstances for disclosures to journalists.

This is critical flaw because "media exposure is often the shove governments need to get them acting in the public interest".

He says the argument against media whistleblower protection, that governments are not willing to risk damage to innocent reputations by unsubstantiated media stories, has some merit but, in reality, the

main problem for governments is that disclosures via the media mean the whistleblower is "off the chain."

Corrupt politicians

Reporting of alleged wrongdoing of political figures is also not given due recognition in the various schemes, says De Maria. The only scheme which specifically protects disclosures on corrupt politicians is the South Australian legislation. He claims this is mostly due to a misplaced focus on the wrongdoing of non elected officials, and that drafting whistle

blower laws that make it hard to reach politicians serves no purpose other than the protection of political corruption.

Whistleblower protection and feedback

Whistleblowers, De Maria points out, perform the invaluable task of exposing secrecy. They "peer between the 'Venetian blinds' into a secret world where power transcends principles". According to De Maria, it is entirely appropriate that they should be shielded from charges of breaching secrecy enactments - but this protection is not included in all existing legislation and legislative proposals.

De Maria analyses the legislative response to the issue of feedback to whistleblowers. Under the ACT Act, a whistleblower is entitled to know why an authority declines to act along with other information regarding the current status of a disclosure or investigation into a disclosure. New South Wales, South Australia and Queensland have watered down versions of these provisions.

While whistleblowers have some rights, they are generally denied involvement in the "investigative and corrective procedures that, on rare occasions, follow their disclosures", argues De Maria. He puts a case for amending this situation, saying that most whistleblowers can more than likely make a vital contribution to correcting wrongdoing and systemic weaknesses.

Whisteblower laws motivated by fear?

Whistleblowing should be seen in the context of democracy, argues De Maria. Whistleblowing legislation serves the state interest, De Maria says, and past whistleblowers know that the state interest is definitely not the same as the public interest.

Regrettably, he says, existing schemes "put democratic dissent on a pedestal and promptly forget about it".

What has driven disclosure laws if it is not democracy and whistleblower welfare? De Maria argues that fear has been the primary motivation. He claims whistleblowers are feared because by refusing to trade ethics for expediency, they can seriously damage vested interests in politics and bureaucracy.

Whistleblower legislation is an exercise in damage control, according to De Maria. He compares unsatisfied and vilified whistleblowers to "a cracker in a tin can ... the noise they make is

loud, unavoidable and directly related to the amount of state suppression that they experience".

NSW OMBUDSMAN: Act a step in right direction but experience has shown its limitations

EXPERIENCES OF THE FIRST YEAR

(From *Corruption Matters*, April/May 1996, Number 2. published by the ICAC.)

Complaints and disclosures

Effective complaint handling systems are an essential part of providing quality public sector service. This applies equally to internal complaints or disclosures made by public officials as it does to external complaints made by customers or clients. Effective internal reporting systems for internal complaints or disclosures are also a management tool which can be of vital importance in alerting management to serious problems within an organisation.

A step in the right direction

The object clause of the Protected Disclosures Act 1994 and other provisions of the Act, clearly indicates that whistleblowers should be protected from reprisal or other liability that arises out of their disclosure. In doing so, the Act is clearly a step in the right direction and, as a statement of Legislative intention, the Act has been a success.

However, there is still some distance to go before the desired destination is reached. That destination is a legislative and administrative framework, along with an attitude amongst at least the senior ranks of the public sector, which ensures that whistleblowing is encouraged, disclosures are properly and effectively dealt with, and whistleblowers are protected from direct reprisals, or other detrimental action which may be indirect (for example, prejudice in promotional or other employment related opportunities) .

Protection

In relation to the protection against reprisals, the onus, in effect, is on the individual who made a disclosure to institute proceedings for the criminal offence of "detrimental action" under the Act. A strong argument can be made out that private criminal prosecutions are not the best, or even appropriate, way to enforce the provisions of this or any other Act.

Another problem is that to be able to claim the protections of the Act against reprisals or other relevant actions, the onus is on the whistleblower to prove that it is a "protected disclosure" for the purposes of the Act. In addition, in relation to reprisals, the onus is also on the whistleblower to then prove to the court, to the criminal standard, that the offence of "detrimental action" is made out.

Implementation of the Act pending its review

Pending completion of the proposed review of the Act by a Joint Parliamentary Committee, and any amendments to the Act which may arise out of such review, it is more than ever vital that public authorities and senior public officials approach the interpretation of the Act so as to further its object.

Allegations of "detrimental action" against whistleblowers, which are within jurisdiction, will be treated very seriously by the NSW Ombudsman.

The jurisdiction of the Ombudsman has recently been expanded to allow investigation of alleged "detrimental action" taken in reprisal for the making of a protected disclosure. This is provided the disclosure was made directly to the Ombudsman or has been referred to the Ombudsman in accordance with the Protected Disclosures Act.

The Ombudsman is otherwise precluded from investigating the general conduct of public authorities relating to matters affecting a person as an officer or employee. However, this is unlikely to restrict the Ombudsman from investigating more general allegations that particular public authorities or officials are failing to implement procedures and practices, or to take reasonable and appropriate steps, to protect whistleblowers within their organisations.

In assessing allegations of "detrimental action", the starting point for the NSW Ombudsman will be an assumption that good administrative practice will generally dictate that CEO's and other senior public officials are responsible to ensure that bona fide whistleblowers are protected from both direct and indirect "detrimental action".

New South Wales News

FROM RICHARD BLAKE

Activities and Administration

Attendances have continued to be a bit disappointing at the monthly Branch meetings, but good at the Sharing and Caring Meetings (every Tuesday night), averaging about ten, despite the

colder weather. Sausage sizzles have continued prior to the monthly Branch meetings. It has been mooted that we discontinue having Branch meetings as business meetings except for three or four times a year, the intervening ones being for speakers or discussions.

For the July Branch meeting (7th July), the existing office bearers will step down and new elections will be held. Members are urged to consider standing for positions on the new committee. Preferably negotiate with Jim Regan, Richard Blake or other long-standing members about this in the next few weeks. Jim and Richard are both feeling burnt out and will almost certainly not re-nominate.

The outings to Sizzlers at Rosehill will now be discontinued unless demand returns. Phone Richard Blake on 559-1680 if interested in continuing or suggesting another venue for the Westies.

ICAC, State Rail, DOCS, and the Protected Disclosures Act

Following its failure to investigate police corruption, which contributed to the need for the current Royal Commission, ICAC has bobbed up in the middle of a lot of things, and WBs will watch with interest how it performs.

In what might be seen as an enlightened development, ICAC is now publishing, quarterly, an eight page tabloid called "Corruption Matters", in which whistleblowing is discussed with reasonable frankness. In issue number two (April/May), they have an article by Chris Wheeler, Deputy NSW Ombudsman, on "Protected Disclosures: One Year On". This acknowledges some limitations of the P. D. Act, goes into some of the many legal complexities which arise, and generally foreshadows that improvements will have to be made. This is very encouraging.

In fact, a review of the Act, required by Section 32 of itself to occur as soon as possible after 12.12.95, is now being conducted by the "Joint Committee on the Office of the Ombudsman". WBA (among others) has been granted its own special hour-and-a quarter hearing. This will be early in July and we will send three members. Individuals and organisations generally are also invited to send in submissions. We are doing this as well and encourage individual members to do so also. Address: Room 813, Parliament House, Macquarie St., Sydney 2000. Phone (02) 230-2737. A copy of your submission, if you wish, would also be handy for the Committee. Please mail to the P.O. Box on the front of this newsletter, or bring to a meeting.

In an editorial in the same issue of "Corruption Matters", ICAC Commissioner O'Keefe asserts that "public support for the ICAC's role .. remains high". This is a bit different from saying that the public are actually satisfied with its fulfilment of the role. In any event, an analysis of customer satisfaction from its own files would be infinitely more valuable than surveys of the general public, and WBA again challenges ICAC to do this. We again assert that our own recent survey shows much disappointment among WBs who have referred complaints to the Commission.

In a surprising twist to the State Rail saga, Mr. O'Keefe has recently declared that it is "a bottomless pit of corruption". This is at the same time as the Minister for Transport, Brian Langton, is saying that everything is all right now in the Authority after the recent, rather brief, special investigation by the Auditor-General. Mr. O'Keefe then said he needed huge amounts of money to make the required investigations. Michael Photios, Shadow Minister for Transport, has now demanded a Royal Commission.

WBA has mixed feelings about all this. For a start, from advices received from WBs, O'Keefe is right and Langton is wrong. Even now, WBs are still being driven out, harassed, and forced into settlements where a condition is that they keep quiet about certain things (a practice which the Auditor-General did say he does not like and which any reasonable person would have to doubt the legality of!). However, according to many anecdotes, ICAC have missed massive opportunities in the past to clean up the SRA on WB evidence. Then again, it is still their job, and, if they want to justify their existence, they should do it, and save the extra expense a Royal Commission would necessitate. At the same time, we commend Mr. Photios's unusual zeal. We assume he realises that a Royal Commission would uncover atrocities going back decades, spanning large slabs of the administration of his own Party. Perhaps this heralds a forward move in honesty by politicians!

It has been revealed that there was a ray of light last year in the beleaguered, under-resourced, ill-performing Dept. of Community Services when a new Central Coast Area Manager blew the whistle to his Dept. Head, Des Semple, about abuses of staff and inmates at a state-run home for disabled people on Peat Island in the Hawkesbury. Mr. Semple set up an investigation, found that the allegations were true, and acted. The repercussions included matters being referred to the Police as well as disciplinary charges. These things were revealed to the Peat Island staff on March 14th, and, on the same day, the Premier, in the absence of the Minister for Community Services, who was sick in hospital, signed a document to downgrade Semple's position (thereby relieving him of it). Whether there is any connection between the two events is left to the reader's conjecture. Enter ICAC again. Mr. Semple, alleging lack of due process in this virtual sacking, went to them and complained. He got an immediate enquiry and quick reinstatement, with several senior people being publicly humiliated or having to stand down.

We would point out that Mr. Semple has, in recent times, had several complaints as serious as Peat Island from whistleblowers who are of much lower grade than Area Manager and apparently done nothing about them. Also, that ICAC has had many complaints from public servants of low rank about more serious matters than due process in employment, and not investigated. Why does public administration in N.S.W. always assume that people of low grade are always wrong and should be ignored? It is a medieval concept, and outrageous.

Police Royal Commission

See the moving report about Debbie Locke by Jean Lennane elsewhere in this issue.

From Hansard, 28 May 1996

State Rail Authority corruption allegations

The Hon. Elisabeth Kirkby asked the following question:

My question without notice is directed to the Attorney General. Is the Attorney General aware that the Commissioner of the Independent Commission Against Corruption told a parliamentary committee yesterday that the State Rail Authority had serious ongoing problems with corruption? Is it a fact that many individuals have had their careers destroyed, been harassed and vilified, and finally compensated for tens of thousands of dollars in damages and legal expenses only after agreeing not to speak out about corruption problems within the State Rail Authority? Does the ICAC have adequate funding to effectively investigate allegations of corruption? If not will the Attorney General ensure that the ICAC has the resources to do what it was established to do: expose corruption?

The Hon. J.W. Shaw answered:

As I understand it, the Independent Commission Against Corruption falls within the Premier's portfolio. It certainly does not come within the administration of the Attorney General's portfolio. I will refer the question about the adequacy of the Commission's funding and the like to the relevant Minister.

South Australian News

From Matilda Bawden

Over the past few months, the South Australian branch of Whistleblowers Australia has been picking up pace and keeping abreast of recent events in the state.

Networking between present members originally began some two and a half years ago, thanks to Dr Bill De Maria (Qld University, Whistleblower study), who was responsible for linking several members at a time when we didn't know there were like-minded individuals in this state.

In the process, I was surprised to discover just how small Adelaide really is. This, I hope, can work to our advantage, if only for the fact that there can only be so many places for the corrupt to hide.

In other words, it should make it easier for us to get to know our enemy in order for us to meet them on their own terms, whereas a larger city might enable the enemy to change its shape and alliances too often to become clearly identified. That's the theory anyway! I would like to see that, through our circle of collective influences, we can build up a network of decent individuals large enough to root out the corruption in the public domain.

A little over two years ago, several members endeavoured to unify a much larger group of concerned citizens who identified themselves as having social justice issues, but who did not want to be identified as whistleblowers. Unfortunately, but understandably, after almost a year of existence, the members' own battles become too great to enable a more pro-active approach by the group.

However, several individuals associated with that wider group did recognize the need for a visible group of people (who would identify themselves as whistleblowers) to draw attention to individual issues as well as the broader political implications of wrongdoing. (It's been suggested that the "silent but deadly" approach is probably the better objective to strive towards, than the "boom and burnout" some groups experience.)

We now have a courageous and committed (albeit poor - but what's new) group of people with a wealth of collective experiences and from whom we are all able to gather valuable ideas and information.

I'll fill in readers on our progress as things develop, but would like to let other groups know that we are planning a vigil for Friday, 12 July 1996. The vigil aims to draw attention to our individual causes. We are not aiming to hold a huge rally on the steps of Parliament House but merely hope that this might level the playing field for those of us who cannot get our stories into the media.

The purpose of the vigil is to target members of the public - not politicians (it's too far before the next election) - because South Aussies generally, do not like to believe that there are whistleblowers in this state (that'd be like believing a mass killer could come from quiet Tassie!)

We aim to have one, two or three highly committed individuals who might be prepared to distribute literature (case summaries), sell books (including those banned) and, generally, talk to members of the public about the nature of whistleblowing.

We would urge other states to consider doing the same, according to the time, energy and committment of its own members and, by all means, make it your own. I had particularly envisaged promoting 2-3 cases which, if successful, might open the flood gates for other similar circumstances, but the ideas are still evolving as I get more input into the planning process from the other states. It's been warmly received by at least three other states so far, so thankyou!

The idea is to set up a table from 12.00 noon until at least 9.00pm to fit in with late night shopping hours, (but 12.00 midnight, could gain more impact if done nationally!). July, also means we can

benefit from the knowledge gained from the Melbourne Conference.

We would welcome any ideas (problems or otherwise) as we lack experience for this sort of thing, but we're eager to learn from those of you who have done this before!

For further information, please contact Matilda Bawden (08) 258 8744. PO Box 70 SALISBURY SOUTH, South Australia 5018.

PS We could use help with banners or placards to say who we are if anyone knows how we can organise this at minimal cost.

Whistleblowers Australia - a brief history

By JEAN LENNANE

Whistleblowers Anonymous was started by John McNicol in July 1991. A Canberra-based retired public servant and activist, he had become concerned about the damage done to people who had blown the whistle, and the lack of legislative and other protection for them.

A group who shared his concerns set up the Board of Management at a meeting at Lake Macquarie in March 1992. Of the original members of the Board, Jean Lennane, Bill Toomer, Ian Buchanan, Keith Potter and Vince Neary are still actively involved.

At the first conference and general meeting in Canberra in March 1993, it was decided to change the name to Whistleblowers Australia.

John McNicol had been doing the work of both President and National Director until then, when Jean Lennane took over as President. He resigned from WBA because of ill health in August 1993. David Roper took over as National Director, and completed the process of incorporation in April 1994.

The first AGM of WBA Inc was on 29.7.95. Brian Martin is currently President, and Lesley Pinson National Director.

State branches of WBA have grown steadily overall (though erratically at times, as people drop out for stress/health reasons), and by 1996 there were branches in all states and territories except WA, where however there are now a number of members, and Queensland, which has developed separately. WAG (Whistleblower Action Group) grew out of Bill de Maria's research project at Queensland University which started late in 1992.

People who participated in the research were offered membership of WAG, which grew rapidly, and incorporated early in 1994.

WAG and WBA pursue the same goals, work closely together, and have some members and an executive member in common, but at this stage have felt there are actual and potential advantages in retaining the two separately incorporated bodies.

From the National Director

The CJC and the ICAC

The Criminal Justice Commission (CJC) in Queensland is in the process of finalising a "Guide to Whistleblowing in Queensland". This document has been prepared without any consultation with WBA or the Whistleblowers Action Group in Queensland. A draft copy of this guide which has been forwarded to the WBA is 45 pages long! Although it usefully identifies many of the pitfalls experienced by WBs, it is so complicated that I imagine it would most likely put any "would be" WB off from proceeding. Since I have not yet met a person who woke up one morning and decided to be a WB, I also wonder how this information would get to anyone before they 'blew the whistle'. Basically you need to speak to a lawyer before speaking to anyone else and nearly everyone leaves seeing a lawyer until it is far too late.

The ICAC in NSW in its April/May Newsletter focused entirely on the "Whistleblowers Law". Some articles focused heavily on Internal complaints handling procedures. Upon reading these it would be easy to infer that as long as a Government body had set up an internal reporting channel, an employee would have to go there and could no longer go straight to the ICAC. Is the ICAC going to do itself out of business I wonder?

In fact, the focus of both the ICAC's and the CJC's publications is on the way in which a complaint is made. If a complaint is not strictly made in accordance with all laid down procedure it is likely that (a) the issue being complained about will be ignored and (b) the aspiring WB will not be protected. This may leave WBs in the future in the position of not only having to defend themselves as they currently do against organisations' attacks against their character, reputation, sanity and competence, but also having to defend the way in which they made a complaint.

I can almost visualise a situation where a person would not be protected by law because they went to the ICAC first when they should have gone internally. Organisations could not only try to "shoot the messenger" but would also try to "shoot the way the message was delivered"!

Since the WBA is still not aware of the ICAC ever taking any action to protect a WB from detrimental action, or acting to stop any organisation from taking detrimental action, this is not as perverse as it sounds.

Currently a WBA member is in the Industrial Relations Court claiming unfair dismissal and arguing for reinstatement. Although under Industrial Relations law it is illegal to dismiss anyone for making a complaint to a competent authority, the WB's (ex) employer, whilst being unable to provide any reason for the dismissal, is arguing that the WB should not be reinstated because they made allegations of corruption about senior managers. Incredibly, management concurred with the WB's initial allegation. Unfortunately they then did the wrong thing to correct the situation complained of. The ICAC, despite acknowledging the receipt of a Protected Disclosure from the WB has done nothing to stop the dismissal, to investigate the original complaints or the subsequent actions taken by management, or to stop the organisation from spending thousands of dollars of public money to try to find reasons why the WB should not be reinstated. No answer has been determined as yet by either the court or the ICAC as to why the WB was actually dismissed, although we have our suspicions!

Meanwhile the WB is contemplating a situation where they might have to sell their house. Legal costs are escalating daily while the (ex) employer sifts through the WB's 17 year career in its desperation to find any instances where the WB might have made a mistake!

Given this situation, members of the NSW Branch of WBA are wondering why the ICAC is conducting public and private hearings into the demotion, dismissal and subsequent reinstatement of the Director General of Community Services. After all, he still has a job, has made no other allegations of corruption that the public are aware of and is having all his legal costs paid for out of the public purse!

Interestingly, the ICAC was proposing to conduct an inquiry into allegations made by Vince Neary but at the last minute advised that these could not proceed due to a lack of resources. Strangely this occurred roughly at the same time as the ICAC decided to conduct its hearings into the Metherill affair which lead to the downfall of Premier Greiner.

It seems that if you are a politician or a senior public servant you can use the services of the ICAC to investigate your conduct and/or your grievances. The rest of us are lucky if the ICAC even responds to our letters and if we are dismissed subsequent to referring matters to the ICAC, we have to pay for our own legal costs in the Industrial Relations Court.

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* Policeman Karl Konrad is fined $1000 for daring to suggest that the police need training in alternatives to firearms more than they need training in the better use of guns.

* Albert Langer goes to gaol for suggesting that people place the major parties equal last on their ballot papers.

* School teachers are threatened with dismissal if they comment publicly on what is being done to the education system.

* Nurses are advised by their union not to speak to the media for fear of dismissal.

* The Victorian Police have refused to answer questions from the 7.30 Report at media conferences.

* The Premier and some Ministers will not appear on the 7.30 Report and maintained a long term ban of the Sunday Age.

Most if not all WBs would share the concerns of members of the FSC about these and other issues such the defamation laws and freedom of information legislation. The FSC recently merged with the Queensland-based Voltaire Institute which was set up in 1992 with the philosophy "I disagree with what you say but I defend to the death your right to say it". The FSC can be reached at PO Box 55-s, Bexley South, NSW 2207. Full membership is $20 and concessional is $10. Phone contacts are NSW 02 502 4806, Victoria 03 9529 6192 and Queensland 07 3298 5219.

Freedom to Care - a British "Whistleblowers" organisation

FTC in England has recently produced a "recruitment brochure" in which it sets out its history, aims and concerns. These are probably much in line with those that members of the WBA also have. As this document has been so well and carefully prepared some of its contents are reproduced below. Members may like to comment on their thoughts on the possibility of a national organsation/ association/movement forming in the future. Where should the WBA devote its very scarce resources in order to bring about social change? It is obvious that the issues we are all concerned about are the same overseas.

FTC identifies its overall campaign for "employer accountability to the public and employee's civil rights" with slogans such as "lets see an end to gagging and bullying" and "assert your right to work with a social conscience".

The "recruitment brochure" contains the following;

CITIZENS AT WORK

Some workplaces are ethically organised. Some are simply muddled. Some are unethical.

How many Barings staff knew something was wrong, but could not speak up? How many people working for Shell feel uncomfortable about its overseas policies? When the Clapham rail disaster occurred how many railway workers could say "I knew something like this would happen"? How many social workers believe they are forced to neglect clients? How many doctors and nurses feel they must accept practices which they would find unacceptable for their loved ones? How many people worry that their employer maltreats animals, but try not to think about it?

Our experience and research shows that many employees are troubled by unethical practices and policies at work - but may be

gagged, bullied, intimidated, have their professional judgment ignored and their integrity questioned.

ETHICS AT WORK

Many of the social and global problems we feel morally concerned about are created by the very organisations we work in. If we remain silent and passive in those organisations we are allowing those problems to multiply. As members of those organisations we have a right to be heard. Our citizenship should be carried into the workplace.

The ethical organisation is one which recognises our citizenship, respects our social concerns and our civil right to express those concerns. It is open, respects due process, and encourages staff initiative, discussion and problem-solving in relation to the social consequences of the organisation's activity.

WHERE WE COME FROM

All over the world a historical tide of human rights and individual responsibility has been turning against unaccountable and irresponsible bureaucracies, public or private. The new consumer movement was already demanding information and responsibility from product and service providers. FTC emerged in the UK in the wake of public expenditure cuts, a new climate of fear in the public sector, and insecurity in the private sector. A number of individuals had 'blown the whistle' on low standards in their organisations. Some had been victimised. Geoff Hunt, having resigned over standards at Swansea University the year before, organised the first UK conference on whistleblowing in December 1991. Graham Pink, the Stockport charge nurse dismissed for speaking about standards of care, was a speaker. Afterwards Geoff and Graham put their heads together. The time seemed right to bring together others who had shared their experience. Other ethical dissenters who were in the news, such as the biochemist Chris Chapman, joined in. So the Healthcare Accountability Network was formed. Expanding its remit to embrace social workers, then all public sector employees, and finally all employees, the network changed its name to FREEDOM TO CARE in 1992. This self-advocacy organisation was not set up with any money and is politically independent. It gives support to individual dissenters many of whom, such as the Ashworth hospital social worker Sue Machin, have joined up. In 1994 the Joseph Rowntree Reform Trust provided a grant to help us on our way. Of course we have grown, appeared in the news, taken on more responsibility, clarified our ideas. We now believe that campaigning for ethical change in the work environment is the only way forward. To achieve our goals we need large scale support. Will you join us and assert your right to a social conscience?

WE WANT TO SEE.....

* CORPORATE EXECUTIVES PERSONALLY LIABLE FOR THE WRONGDOINGS OF THEIR ORGANISATION

It goes with the job, it goes with the responsibility, it goes with the salary. There must be legislative changes to company and public

law to punish both responsible individuals and the organisation as a whole when members of the public are negligently harmed

* MANAGERS ACCOUNTABLE TO THE PUBLIC

All levels of managers in all organisations must be transparently accountable to the public. A situation in which there are strong expectations on ordinary employees to be accountable while the accountability of managers is weak is completely unacceptable in a democracy which recognises the social impact of employers' policies

* BULLYING AT WORK MADE A CRIMINAL OFFENCE

People in positions of authority at work

can often get away with threats, harassment, victimisation and mental pressure - simply because they have a position of authority. It is as wrong to bully someone at work as it is to bully someone on the street

* GAGGING CLAUSES STOPPED

Many employers, such as some NHS Trust Hospitals, put confidentiality clauses in contracts of employment which are of doubtful legality and enforceability. In recognition of the right to freedom of speech, the UK government should give clear policy guidelines to employers to stop this intimidating practice

* A STATUTORY RIGHT TO COMPLAIN

Employment law must be amended to embrace a statutory right of employees to complain or raise a concern. Along lines similar to other anti-discrimination legislation (race, sex, disability) employers should have the onus placed on them to show that they are not infringing a right by dismissing or otherwise penalising an employee on a matter of social conscience

* PUNITIVE COMPENSATION

There should be no ceiling on tribunal awards to employees against employers who infringe their right to complain. Awards should not only make recompense to the employee, they should punish and deter the organisation in proportion to their assets or turnover.

FTC also defines "a pyramid of dissent" as follows - in the unethical organisation not everyone with a concern blows the whistle. Not everyone wants to. Not everyone can. The whistleblower is at the top of the pyramid of dissent. For every whistleblower there may be 100 obstructed complainants - employees who raise a public concern and then drop it when they see what they are up against. For every obstructed complainant there may be 100 fearful bystanders - employees who see what is wrong but are too afraid, and have too much to lose, to make a complaint or raise a concern.

FTC produces a biannual newsletter also called "The Whistle" which focuses on single issues. The latest issue includes three articles on the subject "The Crimes of Employers".

In the first article titled "Don't Pay, Won't Listen", Geoff Hunt describes the situation where subsequent to major disasters such as the Clapham rail crash and the "Herald of Free Enterprise" (P &O) ferry sinking (193 people died), inquiries determined that many employees knew that something was wrong but had been too afraid to speak out or had even been told 'to shut up or else'. Justice Sheen said P &O was "infected from 'top to bottom with sloppiness'". These and many other disasters were preventable and such disasters are the worst outcome of a culture of corporate secrecy. Having failed to listen to conscientious employees, and ignored warnings, irresponsible companies and their executives are still able to avoid paying any real price for their misdeeds and failures. Employers are quick to blame individual employees (i.e. pilot error) after disasters, but despite the large salaries and perks of executives, justified by their "high level of responsibility", executives do not suffer high penalties for their failures. Despite there being about 400 deaths a year in UK workplaces, the first time a company director was jailed for breaches of health and safety legislation ('corporate manslaughter') was in 1995. Under UK legislation a senior person must be found guilty of manslaughter before a company can be convicted - in large organisations it is difficult to find such a person. Even then a company can only pay a fine and one UK company was recently fined $200 for a breach of the Health and Safety legislation which lead to the death of an employee! Geoff also indicates that the UK's Health and Safety Executive (similar to our Workcover Authority and Comcare) are not working effectively. Under the Companies Act, Directors have clear financial duties but no clear duties for health and safety which is a tragic omission.

How often do we hear in Australia the common cry "warnings ignored". Sadly the recent tragedy in Port Arthur, the BHP Moura mine explosion (11 miners died after being allowed to go underground even though mine managers knew that gas was reaching explosive levels)

and the Seaview air crash (subsequent inquiries into the CAA found appalling mismanagement) spring to mind.

The second article titled "Involuntary Manslaughter; Corporate Responsibility for Disaster & Accident Prevention" is written by J Barrie Berkley of Disaster Action. This is an organisation whose prime concerns are the "prevention of disasters and the welfare of those affected by such events - persons who have been physically or mentally injured by one or who have been bereaved by one" (employees and members of the public). They are concerned by the failure of the Criminal Justice System to prosecute companies and their senior officers for serious criminal offences which have related to preventable disasters. Even with prosecution the level of fines are so low they ask the question "is a sufficient price being put on death, injury and loss by society to act as an appropriate deterrent to those organisations which, either through choice or negligence, do not provide adequate health and safety protection?" Disaster Action believes that there are major changes required to (1) Investigation policy (police are often not involved even though manslaughter is a criminal offence) (2) Prosecution policy (Crown Prosecution Services are not involved in initial investigations, this depends on whether the disaster happened at sea, on the land or in

the air. Bodies such as the Health and Safety Executive, environmental health departments, marine or air safety bodies do not generally have a 'punitive' prosecution policy but are, in the main regulatory bodies and mostly fail to refer matters to the police for possible prosecution. Often a decision is taken 'not to prosecute because there have been significant improvements since the....disaster', (3) Directors' Duties, it is difficult to pin criminal responsibility in the absence of clear legally defined duties. Just as it would be deemed unacceptable for a car driver to escape culpability for any uncertainty over what they should do whilst driving on the road, it should be impossible for company directors to escape manslaughter conviction simply due to the uncertainty that exists in ascertaining their duties, and (4) Punishment of Corporations In the US "Corporate Probation" exists. A judge, in addition to imposing fines can impose upon a company a series of conditions which include changes in internal corporate practices to ensure that the company operates safely in the future.

One of the key aims of the criminal justice system is to deter unacceptable conduct and Disaster Action believes that criminal law will only deter company directors and mangers from subjecting people to unacceptable risks if it legislates a clear objective test of manslaughter.

The third article details the history and current state of criminal law and corporate responsibility.

Both FTC and Disaster Action are calling for major law reform in the area of corporate and executive responsibility for health and safety.

If we lived in a world where Chief Executives of organisations automatically lost their jobs in the event of any accident which resulted in loss of life, I expect they would pay more attention to the warnings of whistleblowers and less attention to employees who assured them that everything was OK!

WHISTLEBLOWERS IN THE NEWS

THE NOMAD INQUIRY

From an article in the Sydney Morning Herald by David Lague

In line with the concerns of the FTC in the UK, charges cannot be laid against at least five people who have been identified as bearing responsibility for maintenance and reporting failures due to the expiry of a three year statute of limitations. The brother of an RAAF pilot who died in 1990 in a crash after the tail fell off the Nomad aircraft he was flying fell off forced a Senate inquiry into the crash. The inquiry acknowledged that his brother died through negligence on the part of the RAAF, an apparent cover-up of structural faults on the Nomad aircraft and a chain of deficiencies in the RAAF.

As usual, some 'whistleblowers' from the RAAF who provided honest evidence to this inquiry have since lost their jobs and/or

found their careers in tatters.

This really does send out the message that if you are incompetent, ineffective, and even deliberately negligent the system will cover up for you and you will not be penalised. Telling the truth simply does not pay if it shows up those with more power than you.

ROYAL COMMISSION INTO NSW POLICE

Deborah Locke

The Royal Commission commenced its examination of the treatment of whistleblowers by the NSW Police Service in early May. With the scandalous evidence on paedophiles being presented at the same time, the WB section has not received much media coverage. However Detective Senior Constable, Debbie Locke did receive some media coverage about her evidence that in 1989 she reported serious corruption to the previous Police Commissioner, Mr Lauer. He allegedly responded by telling her "Oh, you're a whistleblower...that's police who dob in other police" and called her an "outcast". She gave further evidence that he "didn't want to hear" and that from then on her career was in ruins, she became a pariah in the service and feared for her life.

Ray Chesterton in the Telegraph Mirror on 8 May described her as being "one of the most heroic of those who have sat in the commission's witness box". I think she deserves a medal. Typically the NSW Police Service is not of the same opinion - she is no longer a serving police officer. In fact in May, Sgt Greg Peters was awarded with the NSW Police Commissioner's Commendation for his work investigating the 1984 shooting of the then Senior Constable Michael Drury. Michael Drury was another "outcast" and as far as I am aware, no-one was ever charged for shooting him.

The NSW Police Service has done itself and the public a great disservice by destroying the lives and careers of many (ex) police whistleblowers.

DEPARTMENT OF FOREIGN AFFAIRS

In May, articles in the Sun Herald by Fia Cumming and Brian Toohey exposed allegations of extensive paedophile activity in the Department of Foreign Affairs and Trade (DFAT). Allegations have also included claims that aid money has been usedh an event to happen. Telstra has already agreed to pay compensation to some COT members, leaving the public as usual having to pay a triple price for bureaucratic maladministration - we pay for their mistakes, their cover-ups and then compensation too.

FEDERAL WHISTLEBLOWING LEGISLATION

Despite Coalition election promises to implement Federal whistleblower protection legislation there is no sign of this promise being implemented to date. Members of WBA are urged to write letters to their Federal MPs and to the newspapers to speed up the

implementation of the recommendations of the two Senate Select Committees in August 1994 and October 1995.

SOAPBOX

What is a Whistleblower?

I have found it interesting that there are a number of people who have started conversations with me with "I'm not a WB but....." who have then launched into their story which to me has perfectly described a classic WB situation. This made me wonder what it is about the perception of people, who I would define as WBs, that makes them think that they are not a WB. Further, questions recently asked of me along the lines of "would you recommend that I blow the whistle" (from people who by my interpretation had already done so) and "why do people decide to blow the whistle?" from a researcher has led me to the following perception - WBs are "created" by the failure within existing Institutions and of existing systems in place, to effectively deal with problems or complaints when they first arise.

If you think about it, successful "whistleblowing" probably happens 99.99 per cent of the time. When a person notices something is wrong and points this out to a person who is in a position to put it right, in an ethical environment, the problem is resolved - end of issue. A WB is created when that process, i.e. the expected system, fails. I have not yet met a person who "decided" to be a WB.

I think most WBs do not set out to become a WB, or at any point of time make a conscious decision to "become a WB". The people I have spoken to, who believe they are WBs, would, I think, agree that they did not set out to be a WB but realised that they were one some time after they had effectively, often accidently, "blown the whistle". They are people who started out with a basic belief that the system would work, i.e. that if, as an employee they pointed out a problem, the person they reported it to would fix it. It is only when that does not happen and the Institution starts to react in its usual way, i.e. to (1) cover up its lack of response, (2) cover up the original problem, (3) "shoot the messenger" with any means available, that the person realises they are a WB.

So, what is a Whistleblower? Has it to do with particular characteristics of WBs themselves, or are they created by a system that has failed them? Personally I believe anyone can become a WB and that WBs are not necessarily a "special sort of person", though some may disagree.

It is for that reason that I have concerns when some "self-titled" WBs raise questions as to whether others have the right to call themselves a WB. On several occasions I've heard "I don't think so-and-so is really a WB". So what! It is really not useful for those who approach our organisation to be criticizing others in effectively the same style as those bureacracies we all have complaints about.

WB's should have better things to do than to sit in judgement of others like assisting those people they do think are WBs with their

cases. The focus should always be on the message, not the messenger.

I hope the WBA never attempts to make its membership exclusive on the basis that a WB can only be a certain type of person with certain sorts of concerns. That would be the day I resign.

Letter to the Editor

Building a respectable image for whistleblowers

A barrier that I feel NSW whistleblowers have to overcome is a common public perception that opposing corruption is in some way an unsavoury, stupid, or even selfish act. This may be due in part because of the embarrassment or hopelessness that most people feel when faced with the prospect of having to complain about any of the minor unfairness and dishonesty we all encounter from day to day, combined with a growing lack of faith in today's legal and governmental systems to deliver a product even marginally connected to natural justice.

Polls indicate that Australians are much more ready to apologise than to complain. Marketing research in the USA indicates that even there only about four per cent of people actually pursue a complaint over poor consumer products and services. For more important matters it does not seem unreasonable to suppose that silence in the face of injustice and corruption is the norm. Thus it seems reasonable that WBA should indeed be seeking to change the culture to oppose corruption in a more positive way.

My personal experience of whistleblowing occurred because I chose to be law abiding. My choice was not to join in with others in breaking federal laws but rather to defend federal law by following the correct path as I was advised to by the federal authorities. I certainly was not dissenting in any way, except in so far as I was refusing to break the law.

So I did not even understand at the time that I was whistleblowing. Indeed if you had asked me back then what whistleblowing was all about I probably would have said telling the tabloid press about something that one had been sworn to secrecy about but that one felt was wrong and needed exposing.

However I soon found that I was classified as a troublemaker at the State level. That the State had no obligation to obey federal law, but rather expected me as a State employee to break federal law even if this rendered me subject to possible fines and imprisonment under federal law. I lost my employment with a State Government following my defence of federal law. Such is Australian federalism.

I am concerned at the focus of the upcoming Melbourne conference. To me a core value in whistleblowing is opposing corruption by upholding the law and seems to me that dissent is better viewed as different to whistleblowing and not just some kind of linear extension. For example is what Greenpeace does whistleblowing or dissent?

I would like to see WBA work to associate whistleblowing with the values of honestly, righteousness, consistency, respect for ethics and natural justice and hence, wherever possible, support of the law. I am concerned that if WBA becomes associated with dissent in the wider context then whistleblowers will continue to be seen as just troublemakers by large portions of the general community.

Andrew Allan

(Personally I can't see any difference between whistleblowing and dissent. L.P Ed.)

Defensive behaviour

BY BRIAN TOOHEY (From the Sydney SUN-HERALD 5.5.96)

The day before the March 2 election, the Department of Foreign Affairs and Trade suspended an employee, withdrew his security clearance and barred him from the building.

It was a bold move. The employee, Alastair Gaisford, had earlier gone to the Australian Federal Police with a six-page statement alleging a former ambassador was a pedophile.

Gaisford had also provided a Senate committee with information about administrative problems in the department. And during the election campaign, when the Keating Government was supposed to be in caretaker mode, Gaisford blocked grants to an academic who was a former Labor ambassadorial appointee.

After the election, Director of Public Prosecutions Michael Rozenes QC acted on a brief from the Federal Police and charged former Ambassador to Cambodia and the Philippines, John Holloway, with breaches of the Crimes (Child Sex Tourism) Amendment Act. Holloway is vigorously denying the charges and contesting the constitutional validity of the Act.

The Federal Police are continuing investigations into a number of diplomats or former diplomats whose they suspect of breaching that law. The new Foreign Minister, Alexander Downer, has confirmed that one of the people under investigation is a former member of the Australian Embassy in Jakarta, William Brown.

Brown now lives in the same village on the Indonesian island of Lombok as Robert "Dolly" Dunn whose pedophile behaviour has featured prominently in the NSW police royal commission.

Following a detailed report in The Sun-Herald a fortnight ago, Downer announced he would appoint an independent investigator to examine allegations of paedophilia among Australian diplomats. Downer said no departmental officer should fear being a whistle-blower. "There should be no suggestion of any cover-up at all, not even a hint of it", he said.

Meanwhile, Downer's department has decided to fight an action which Gaisford has taken in the Federal Court seeking orders to overturn his suspension. Gaisford's barrister Chris Erskine told Justice Paul Finn in Canberra on Wednesday the suspension was motivated by his client going to the Federal Police and the Senate rather than fears about threats to security.

In a statement to the court the department's security head William Fisher said he was concerned Gaisford "may have sought to damage the reputations of the department and individual officers which, if true, would bring into question his trustworthiness and loyalty".

Fisher said he was concerned about Gaisford's "possible involvement in the making of deliberately untrue allegations of pedophile activity by officers of the department". He was also concerned about Gaisford's possible involvement in making deliberately untrue accusations of fraudulent activity to the Federal Police.

Fisher's statement, however, failed to explain why going to parliament or the police with allegations of improper conduct should be regarded as disloyal, specially as the police have taken some of the allegations extremely seriously. Fisher also claimed in his affidavit that Gaisford was possibly involved in unauthorised disclosures to the media. Gaisford denies any breach of security.

The court action, which continues, could hardly have cone at a worse time for Foreign Affairs, It now finds itself defending its decision taken the day before the election - to suspend an employee who had made serious allegations relating to paedophilia. At the same time it has to live with a new Government which has promised a thorough inquiry into the handling of pedophile allegations within the department.

A genuine inquiry will face no lack of issues, not least of which should be the security implications if any of the allegations should prove true. While no one may have been compromised by a foreign intelligence service, posting pedophiles to diplomatic positions is not usually regarded as an acceptable risk.

In one case, a diplomat who was asked to resign on the basis of photographic evidence of pedophile activities had been posted to a communist country with an active intelligence service.

Nor do diplomats who engage in pedophilia do much to improve relations with the host country. While Foreign Affairs in recent years have been quick to accuse others of being careless with

national security or with lacking an appreciation of Asian sensitivities, it may turn out that the independent inquiry finds that the most crass offender has been the department itself.

Foreign Affairs, for example, let an Australian corporation employ a former diplomat whom the department had asked to resign after the FBI voiced concern about his claimed involvement in pedophile activities.

Apparently the department did nothing to prevent this corporation posting the ex-diplomat to an Asian capital and did not pass on the FBI's concerns. According to Australian observers, high level officials in that country resented the appointment of someone they regarded as a pedophile.

Any serious inquiry will also have to confront the extent to which previous foreign ministers were briefed on allegations about Australian diplomats and what action they took.

Downer will come under heavy pressure to soft-pedal his promised inquiry. If he does, he runs the risk that more claims will surface from other whistleblowers who don't regard their actions as disloyal.

REPORT ON RECOMMENDATIONS ON WHISTLEBLOWING BY THE COMMISSION OF GOVERNMENT (WA)

By Greg McMahon (Legislation coordinator, Whistleblowers Australia.)

Whistleblowers have made significant contributions to the deliberations of the Commission on Government in Western Australia into public interest disclosures.

Submissions received and public hearings held late last year have been an additional opportunity for whistleblowers to persuade a jurisdiction towards modern legislative and administrative provisions for the protection of those who make public interest disclosures.

The Commission on Government received a written submission from the Whistleblowers Action Group (Qld), and the Legislation Coordinator for Whistleblowers Australia, Greg McMahon, was an invited witness before the public hearings. The Commission also drew on the writings of Bill de Maria and Cyrelle Jan from the Qld Whistleblowers Study at the University of Queensland, and of Jean Lennane and Stan Karpinski, namely, the Whistleblowers Australia Report on ICAC. Mention must also be made of the contributions of 16 West Australian whistleblowers given code names WB1 to

WB16, and of named individuals who from their evidence obviously had first hand knowledge of the issues for whistleblowers.

The report by the Commission on its analysis of the information presented to the Commission (Report No 2 Part 1) was distributed early in 1996. The Report's recommendations to the West Australian Government are a recent measure of the impact whistleblowers are having on the latest government review of public interest disclosures.

The COG Report drew on the opinions of whistleblowers with respect to many issues including the following:

* Definition of Whistleblowers and Whistleblowing.

* Definition of Wrong doing.

* Anonymity in making public interest disclosures.

* Dead-end processing of complaints.

* Malicious Whistleblowing.

* Assisting Whistleblowers.

* Protecting Whistleblowers.

* Onus of Proof.

* Safe custody of documents.

* Availability of a remedy for reprisals.

* Anti-corruption bodies.

"Wounded Workers" (de Maria and Jan) was also persuasive, the COG empowering a whistleblower protection body to take action on behalf of whistleblowers that whistleblowers could take on their own behalf.

The bulk of evidence given by McMahon at the public hearing was on the protection of whistleblowers from reprisals. McMahon emphasised:

* the need for an appropriate standard of proof,

* putting the onus on proof on employers with respect to reasons given by employers for alleged reprisals or personal actions taken against whistleblowers,

* the need for safe custody of documentary evidence,

* the availability of a remedy for whistleblowers who sustain losses or hurt as a result of reprisal.

The COG accepted all arguments of this type put to them by McMahon:

* the public interest disclosure need only be a ground of any significance for a personal action against a whistleblowers, for that personal action to be an illegal reprisal for which compensation would be available. This was the causal test advocated by McMahon, who argued against the harder provisions in the recent Qld legislation which required the disclosure to be the substantial reason for the personal action before the personal action would become a reprisal.

* the Industrial Relations Commission would be given power, COG recommended, to order an employer to provide documents relevant to alleged reprisals.

* the Public Sector Employment Tribunal would be empowered to effect a transfer of a public sector whistleblower where the whistleblower was agreed. This would serve the purpose of removing whistleblowers from harassment and/or providing whistleblowers with the opportunity of continuing their careers.

The WAG (Qld) submission and McMahon in evidence at the public hearing argued the national whistleblower policy position that the body responsible for the protection of whistleblowers be separated from the anti-corruption body responsible for investigating wrongdoings disclosed by whistleblowers. The Report by Lennane and Karpinski explained to the COG the perceptions Whistleblowers have of one anti-corruption body (ICAC) and "Unshielding the Shadow Culture" listed perceptions by Qld Whistleblowers of another (CJC); these perceptions explain the need whistleblowers have for a separate whistleblowers protection body. COG, however, would not go this far. The Advice Unit would be included in the anti-corruption body, COG ultimately recommended; the Advice Unit would, however, be kept independent of the investigation unit and the receipt of complaints unit of the anti-corruption body. Roles would also be given to the Public Sector Employment Tribunal, the Legislative Council Standing Committee on Public Administration and the Commissioner for Public Sector Standards, and a veto placed on particular Government directives to the Director of Public Prosecutions, as a series of checks and balances to ensure whistleblowers are not simply used and then abused by witness hungry investigators. This was not, however, the result argued for by whistleblowers, and is the singularly most damaging (to whistleblowers) shortcoming in what the COG propose for the reform of the public sector in Western Australia.

In most areas of debate then, whistleblowers and experts on whistleblowing have had a positive impact on the recommendation of the COG regarding public interest disclosures. On the important policy plank for the establishment of a separate body responsible for whistleblower protection, including advisory and investigatory (of reprisals) functions, COG has not recommended as it should have; there is, however, in COG's report a visible acknowledgment of the legitimacy of the arguments whistleblowers have for this policy plank. Further opportunities for repeating this debate will, I am sure, move jurisdictions eventually to the whistleblower's view.

It happened in the USA, albeit after 10 years.