# The Whistle

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

**August 1996**

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

---



---

## In this issue

# FROM LESLEY PINSON, NATIONAL DIRECTOR

## National Conference

The second national conference of the WBA held in Melbourne on 29 and 30 June was generally held to be a success by all who attended. Enormous time and effort was put in by those who were involved in making this conference happen and congratulations and thanks are especially due to the Victorian Branch and in particular Kim Sawyer for their sterling efforts which ensured that things went smoothly on the day. Thanks also to those who spoke, sent in papers and arranged sessions and workgroups. I hope that there will be more conferences in the future. This will of course depend on how much energy people have to arrange them. Some of us are still recovering from this one and waiting to get our voices back!

We would appreciate any comments and feedback from those who attended for future reference.

## Western Australia

The Western Australian Commission on Government (COG) has completed some of the first of a series of reports it is producing in response to the recommendations of the WA Inc. Royal Commission. These reports are not only of critical importance for debates about governmental reform in WA, but raise issues of broad concern to anyone interested in parliamentary government in Australia. Report No. 2 part 1 covers whistleblower protection and functions of the Official Corruption Commission. This can be obtained from Dymocks 705 Hay St. Mall, Perth, WA 6000 for $25 plus $6 postage.

For general interest, Report No. 1 deals with secrecy laws, cabinet secrecy, parliamentary privilege, the electoral systems for the Legislative Council, financial administration and powers of the Auditor General. Report No. 2 part 2 deals with political donations, electoral expenditure, parliament's scrutiny of the public sector, legislation committees in parliament and an independent archives authority. Report No. 3 covers conduct standards, caretaker governments, government commercial activity, government advertising and travel, financial independence of Parliament and the Ombudsman's role.

The WA COG can be contacted on Free Call 1800 622 054.

## Department of Foreign Affairs & Trade - Inquiry (?) into paedophile allegations

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 used to buy orphans for sex. The behaviour of diplomats has embarrassed Australia's reputation internationally. Alexander Downer promptly announced that a full judicial inquiry would be held and urged whistleblowers to come forward with evidence. However, at the same time, he has refused to take any action in relation to the DFAT suspending Alastair Gaisford, a DFAT employee who has been charged by the DFAT for making malicious allegations about paedophiles and with being 'disloyal' to the department!

Downer subsequently announced that the inquiry would be held behind closed doors and would be conducted by an ex senior public servant. This was branded by the Opposition as powerless and a whitewash. There would be no protection for whistleblowers and this would be similar to the ICAC's two year inquiry into paedophiles in NSW which failed to produce any real evidence.

At the end of June, at the request of the DFAT, Federal Police Officers conducted a raid on Mr Gaisford's house removing documents which the DFAT may try to use to charge Mr Gaisford with theft. This behaviour leaves little doubt about the lengths the DFAT is prepared to go to frighten off anyone who has evidence of the alleged paedophile activities engaged in by its present or former officers and is most likely to have deterred those who have such information from making submission's to the "secret inquiry". What has the DFAT to hide?

Mr Downer's attitude and lack of any action in response to the DFAT's treatment of Mr Gaisford has hardly been likely to encourage anyone with knowledge about paedophiles or misuse of public expenditure to come forward with that information.

Interestingly the AFP Officer in charge of the raid and the person appointed to assist the "secret" inquiry are one and the same. Let us hope that he will be even handed and will raid the residences of those against whom allegations of paedophile activity are hopefully being inquired into or we will really have to wonder exactly what it is that is being investigated and whether this inquiry is really independent. Still, as it is unlikely that the media would be allowed to report on any such raids even if they were to be carried out, we will probably never know.

At the National Conference in July, a unanimous resolution was passed deploring the conduct of the DFAT and the AFP in relation to this raid and the treatment of Mr Gaisford. Prime Minister Howard has been advised of this resolution

in a letter in which the WBA has reiterated a request that Federal Whistleblowing legislation is implemented in accordance with the Coalition's election promises.

## Telstra - avoidance of Freedom of Information laws

The Commonwealth Ombudsman recently issued a scathing report about Telstra's attitude to its customers and of its administration of the Freedom of Information legislation. Telstra was found to "remain orientated to avoiding disclosure of information". This comment could be applied to all of the organisations WBA members have had experience with. A customer of Telstra, Mrs Ann Garms, who is a member of Casualties of Telecom (COT) Cases Australia has demanded that senior management of Telstra are 'called to account'. The WBA is not holding its breath for such 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.

## NSW standing commissions - avoidance of their primary investigative function

Complaints made by individuals about the NSW Health Care Complaints Commission (HCCC) run along similar lines as those made about the ICAC. Currently the Joint Parliamentary Committee to the HCCC is conducting an inquiry into "localised health complaint resolution procedures". Although the HCCC must investigate complaints if "in their opinion" this is warranted after initial assessment, according to the Medial Consumers Association the HCCC appears to adopt the same methodology as the ICAC by making numerous assessments NOT to investigate. It seems the public is paying a great deal for commissions such as the ICAC and the HCCC NOT to do anything. The following letter by Dr Eleanor Dawson (retired Psychiatrist) which was published in the Sydney Morning Herald on 18 July is indicative of the concerns raised by many 'obstructed' complainants:

*"The Health Care Complaints Commissioner, Ms Merrilyn Walton, is reported to have expressed concern that the psychiatric profession had been slow to report alleged sexual misconduct of psychiatrists, also to have suggested that there is a need to consider making such reporting mandatory (Herald July 6).*

*Whatever the speed of action of professional organisations, I have detailed knowledge of two such complaints made by individual professionals in the mental health field, one of them a senior psychiatrist. Both complaints had been made*

*explicitly in the general interests of patients and profession and in each case the outcome after 5 years is most unsatisfactory.*

*After 2 1/2 years the commission (then the complaints unit) reluctantly investigated one, proceeding eventually to make it out behind closed doors with an order suppressing names of the practitioner and witnesses. In the same matter only nine months ago, the commission joined in and supported the subject practitioner's Supreme Court action, conducted by his medical defence organisation, to prevent the original complainant psychiatrist appealing against the decision in the Medical Tribunal.*

*The other complaint has never been investigated at all in any reasonable sense. In this context the Commissioner's virtuous consideration of mandatory reporting seems like clever window dressing. What is really going on?"*

Just as employees in the NSW public sector are obliged to report their *suspicions* of corruption (not proof) either internally or to the ICAC, the ICAC for reasons it keeps to itself, chooses not to investigate over 95% of complaints about corruption. Prior to any investigation, the ICAC even decides that some complaints are frivolous and/or vexatious. How this can be decided before there has been any investigation and it has been categorically determined that there has been no corruption is anyone's guess. Perhaps staff at the ICAC are psychic.

An article in the Sydney Morning Herald on 20 July gives some useful insights into the attitude of the ICAC's investigators. It was reported that 4 investigators had resigned from the ICAC as they had misgivings about the methods of the commission and those of its commissioner, Mr O'Keefe, fearing the ICAC's bureaucratic approach would bungle an on-going inquiry into Aboriginal land councils. A director of the Western Aboriginal Legal Service, Mr Alex Pappin was quoted as saying that people with complaints had been "treated like criminals". This attitude was reflected in Mr O'Keefe's statement to the Parliamentary Committee which is currently reviewing the NSW Protected Disclosures Act; he appeared to come very close to expressing his contempt for whistleblowers (i.e. complainants).

If the HCCC treats complaints in a similar manner one can only have the greatest of sympathy for any person who dares to complain that they have been abused by a psychiatrist.

## Aboriginal Deaths in Custody - are royal commissions worthwhile?

Amnesty International has recently condemned as shameful Australia's failure to curb the soaring number of Aboriginal deaths in custody stating that "every one of these appalling

deaths is an indictment of Australian Federal and State government's record of abysmal failure to tackle Aboriginal deaths in custody. Despite much talk and even a royal commission into Aboriginal deaths in custody, little as changed. Some would say the situation is worse.

One really has to wonder if royal commissions serve any useful purpose if recommendations made as an outcome of these are ignored, never implemented or even if implemented, this fails to achieve an improvement to the problem inquired into. According to the Aboriginal Deaths in Custody Watch Committee the numbers of Aborigines being jailed is on the rise which is a contravention of a key recommendation of the royal commission.

NSW has a history of conducting royal commissions into police corruption at regular intervals and it would seem reasonable to consider that the current one may not be the last.

So, are royal commissions worthwhile? Should we continue to allow history to repeat itself? What can be done to ensure that recommendations are implemented effectively? It seems as though the only group which appears to gain substantial benefit from these commissions is the legal profession.

## Private Sector Whistleblowers - warnings ignored at public expense

In recent months there have been a number of major stories about serious problems in the private sector nearly all involving great embarrassment and substantial cost to corporations (and of course shareholders and other members of the public) - embarrassment and costs which could have been avoided if the warnings of WBs had not been ignored e.g., the deaths of passengers in the Monarch airline crash, the environmental damage caused by BHP at Ok Tedi and Shell in Nigeria, the collapse of Barings Bank and of copper prices, and Coles Myer.

Corporations have ended up with egg on their faces after years of attempting to cover-up, bluster and shut-up critics. Even when problems have been highly publicised and become undeniable, no-one ever seems to get called to account and it is the public who always ends up bearing the cost.

Bankers Trust recently backed down and apologised to a female employee who complained about sexual harassment and appalling behaviour on the trading floor which had been accepted practice for years, but only after days in public hearings, over which BT had attempted, but failed, to gain a suppression order. A win for the individual but only gained at a great deal of personal cost.

There is no doubt that we must lobby for legislation for to protect employees in the private sector who speak out in the public interest. We are all affected by what private sector organisations do and as more public sector agencies are privatised, such legislation becomes even more imperative.

All members are urged to write letters to papers and to lobby their Federal and State MPs to demand that the issue of whistleblowing legislation for all employees is put on the immediate agenda.

### 'QC attacks whistleblower sacking' (*Sydney Morning Herald* 20 July)

Mr Phillip Coleman, QC, has recently completed an inquiry for the ABC into the treatment of WB John Millard who complained about issues which he considered compromised the editorial independence of the ABC. Mr Coleman reported that Mr Millard, a long-time television reporter, was victimised on several occasions and that his whistleblowing "had an effect" on management ending his contract, despite the ABC's policy not to discriminate against whistleblowers. Senior ABC executives were heavily criticised in the report. It will be interesting to see what, if any action is taken against these executives and what if any remedy is to be afforded to Mr Millard. Don't hold your breath.

## QUOTES

"Information is the lynch-pin of the political process, knowledge is quite literally power. If the public is not informed, it can not take part in the political process with any real effect." -- Tony Fitzgerald, Queensland's Royal Commissioner

"Blessed are the cracked for they let in the light." -- Unknown.

"Sunlight is the best disinfectant." -- Unknown.

## Organisational support for whistleblowers

By GREG McMAHON

*These notes describe matters raised by participants during the brainstorming session of the Whistleblowers Australia Strategy Workshop held in Melbourne on 28 June 1996.*

The participants included individuals from NSW, Victoria and Queensland as well as representatives from the Whistleblower Support Group established in one of the major public sector organisations in Australia.

The participants brainstormed on the question:

* What support do whistleblowers in an organisation need?"

Three general areas of support were identified.

* Whistleblowers need to trust or be comfortable with/be reassured as to how they will be treated in the organisation.

* There needs to be a culture of support within the organisation for whistleblowers and whistleblowing.

* There needs to be a community environment of support for the contributions by whistleblowing and whistleblowers.

**Trust**
This is the essence of the climate within an organisation that is necessary before whistleblowers are likely to come forward within those organisations.

**Culture of Support within Organisation**
Many ideas were proposed for organisations to demonstrate genuineness in developing support programs for whistleblowers within their organisations.

* Multiple avenues should be made available to potential whistleblowers for the disclosure of waste, corruption etc, including

internal avenues (multiple)

external avenues

anonymous avenues

* Chief Executive Officers must take a personal and active role in recognising acts of whistleblowing for their value to the organisations and the loyalty and courage of whistleblowers for their disclosures.

* The protections afforded whistleblowers need to achieve the same profile and levels of acceptance as the categories of persons (females, aboriginals, migrants, handicapped persons) protected under EEO legislation.

* Employees need to be given training in the ethics of the organisation from their earliest employment.

* Systems of both one-on-one whistleblower support officers and case management officers need to be established.

* Past whistleblowers from within (and without) the organisation should be involved in whistleblower support.

* Practical advice should be given to potential whistleblowers both on: what they should consider before making a public interest disclosure; how they can best protect themselves against most forms of common reprisals.

These advices and practical hints (and warnings) should be included in organisational writings on their whistleblower support programs; else the organisation should refer their employees contemplating making a disclosure to an outside organisation (such as Whistleblowers Australia) who may be able to provide this information and advice.

* The duties statements of Senior and Middle Managers and their Performance Plans should include their responsibilities both with respect to wrong doing and also to the treatment of those who disclose wrongdoings.

* Whistleblowers should be advised of the outcomes of investigations into matters that were the subject of disclosures made by these whistleblowers.

## Community Environment of Support

The Whistleblower needs to feel they have support for their disclosures not only from within the organisation but also from the general community.

This favourable community environment, it was held, would be established by:

* the enactment of effective whistleblower protection legislation.

* a record of willing enforcement of the legislation by the appropriate authorities.

* a record of remedial outcomes effected by appropriate authorities to repair the lives and careers of whistleblowers injured by reprisals.

## Condusion

The result of the brainstorming indicated:

* there are a lot of things that organisations can do to demonstrate actions as well as words in the support of whistleblowers amongst their own staff.

* there is a role for outside organisations such as Whistleblowers Australia in the development of whistleblowers support programs within organisations.

* organisations by themselves cannot achieve for whistleblowers the support whistleblowers need - the support must also exist in the general community.

# WBA National Committee Meeting, 28 June 1996

The day before the national conference in Melbourne, the national executive of WBA held a meeting in the morning to discuss various issues, especially priorities, campaigns and strategy for the future. From the national executive, those attending were Brian Martin (president), Jean Lennane (vice president), Isla MacGregor (vice president), Lesley Pinson (director), Matilda Bawden (secretary), Greg McMahon (legislation coordinator) and Kim Sawyer (conference coordinator). Vince Neary (treasurer) was unavailable. As well, some other members were in attendance for part or all of the meeting. Here are the main outcomes.

## Frequency of publication of The Whistle

It was agreed that if possible The Whistle would be brought out 6 times per year, but this is at the discretion of the editor (Lesley Pinson), and it is possible that contingencies may reduce the frequency.

## Return of a fraction of membership fees to branches

At least one branch wanted its allocated fraction of membership fees returned to cover expenses such as payment for typing. Currently a large fraction of the annual membership fee is consumed by production and distribution of The Whistle, by distribution of information to people making inquiries, and by phone calls by some members of the national executive. These costs are borne centrally rather than by the branches. We recommended that one third of the membership fees be available for return to branches on request and production of suitable receipts or invoices. A formal decision will be made at the next Annual General Meeting.

## Tax-deductibility

We recommended that WBA not seek tax-deductibility, since it would put too great a constraint on our ability to engage in action supportive of whistleblowers and related policy issues.

## 1996 Annual General Meeting

We agreed on an AGM in November in either Brisbane or Sydney, to be decided at the end of July depending on the number of financial members in Queensland. Since then, I have been informed that there will not be enough WBA

members in Queensland. (Whistleblowers there are more likely to be members of Whistleblowers Action Group, a separate organisation that works closely with WBA.) Hence, the AGM will be in Sydney in November, with details to be announced.

## Arrangements for memberships, finances, record-keeping, contact with members, and other duties and activities by committee members

Richard Blake of the NSW branch has raised several concerns: some membership forms arrive without nominators and seconders; applications for membership need to be formally accepted by the national committee We appointed a subcommittee consisting of the national director, secretary, and treasurer to look into these issues and make proposals for the AGM.

## Policy on media releases, comment to media, etc.

We agreed that any member of the national executive can issue a media release or comment to the media. In normal circumstances, media releases should be checked first with another member of the executive, typically president, vice-president or director. In all cases, approval should be sought in advance from anyone whose name is given in a release. In other words, members of the national executive should take responsibility for their own initiatives, taking care to check with others especially on sensitive topics (i.e. most of them!). The same sort of policy can apply to state branches. Isla agreed to prepare a list of media contact numbers and to circulate a media release kit. WBA does not have a formal policy on specific issues, for example whistleblower legislation. We noted that within the organisation there is support for different policy positions.

## Defamation leaflet

The draft defamation leaflet text that I had circulated was approved for publication as a WBA document, with permission to make minor changes and add graphics.

## Content of *The Whistle*

Lesley appealed for submissions of state reports, articles, press clippings, etc.

## Strategy discussion

A number of positions were presented in a discussion of strategy, including the following options:

* focussing on federal whistleblower legislation, and insisting on John Howard meeting a delegation from WBA;

* running a number of campaigns, especially ones that allow people to be involved;

* nominating the top 10 whistleblower cases;

* holding a whistleblower celebration as planned in NSW.

There was no consensus on a particular national campaign or initiative. That means that branches and individuals can pursue the campaigns they believe are most appropriate.

Brian Martin

# ICAC survey: credibility, removal of bias, etc.

The following is a letter sent to ICAC by Richard Blake, NSW Committee Member, on 28 July 1996. It was given as his own opinion and is not necessarily the opinion of any other member.

Lisa Zipparo
Research Officer, ICAC
I refer to our phone conversation of 22nd July. Thank you for the information you gave and for courteously receiving my suggestion about the selection of twenty.

I have had further thoughts about the project and the observations hereunder may be of assistance.

I was somewhat surprised that ICAC seemed to believe that results produced by a study done in secret by them would receive automatic total credibility from the general public or from my fellow-members of Whistleblowers Australia. I am not here accusing any particular individual of anything; but I must say it would obviously be as absurd to expect anyone to assume that unethical behaviour cannot happen in ICAC as it would be to expect them to assume that crime never happens in the Police Service. It seems essential, therefore, for your own sakes as well as for the public interest, that methods are built into your study which will ensure that it is not only fair and truthful, but also seen to be fair and truthful.

I acknowledge the absolute constraint that no name of any of your clients can be revealed to any outside party.

Given that, I reiterate here my suggestion that a random place in the alphabet be chosen in front of independent witnesses, and then, with the relevant names of respondents

arranged in alphabetical order, the twenty names starting at the selected place be used. (If the run of names is under twenty at the end of the, say, Zs, one goes to the beginning of the As). ICAC could then make public the range by quoting, say, the first two letters of the first and last names, e.g. "Ga to Mo". Respondents whose names fell within this range would expect to be contacted, and those whose names did not would not.

This process by itself will obviously not achieve complete credibility of results, and a system of questions and answers needs to be devised which will then ensure this (or go close to doing so). I suggest that at least part of the survey should be a schedule of, say, seven or eight basic questions to which the respondent will give answers in the form of a satisfaction rating from, say one to ten. The questions could relate to courtesy, promptness of reply, thoroughness of investigation etc. etc. A chart of all twenty answer-schedules, in a random order, could then be published in a (pre-advised) edition of a leading newspaper and each respondent could check that his/her response was there. E.g., if there were seven questions and Joe Bloggs answered: 5, 6, 7, 1, 0, 9, 3, he could look in the paper and see that line; and all the others could check and see their lines.

In fact, this system lends itself much more to a mailed response than to one made by phone, and I think this should have been done as supplementary to the phone survey or even instead of it. However it could be done by phone, as long as the respondent keeps notes; or you could allow the respondent to opt during the phone call to be sent a schedule.

Another important action to enhance credibility would be to make public the whole method you intend to use, including the questions you intend to ask, before you begin the selection.

# New South Wales News, by Richard Blake

## Activities and Administration

The Monthly meeting on 7th July included the AGM of the Branch. A new Committee was elected. The President is Cynthia Kardell, a Health Commission WB, and the Secretary is Alex Tees, a Building Services Corporation WB. Other Committee members are: Jim Regan (former President), Richard Blake (former Secretary), Ross Sullivan, Grahame Wilson and Mustafa Karamanoglu.

Attendances have continued to be very good at the Sharing

and Caring Meetings (every Tuesday night), peaking at 16 on the 16th July, despite the cold weather.

Please make a special note in your diary:

The new President, assisted by other members and in collaboration with the Balmain Presbyterian Church, is arranging a "Celebration" of Whistleblowing (her own idea) for Tuesday 20th August. This will be held in the Church, and will combine inspirational talks and musical items. See enclosed flyer.

Please make a another special note in your diary!:

NSW Attorney-General and Minister for Industrial Relations Jeff Shaw has agreed to speak at our monthly Branch meeting on Sunday 1st September. At time of writing, we do not know the exact time, so phone Richard on 02 559 1680 or Cynthia on 02 484 6895 about a week before if you need to know; or just turn up at the sausage sizzle at 12.30. to be safe. We also do not know the title of the talk, but it will probably be about the Protected Disclosures Act.

## Dept. of Community Services

Due to time pressures from many other things, we still have not yet officially demanded a Royal Commission from the Government, but hope to get this done soon.

## Independent Commission Against Corruption

The dispute between WBA and ICAC with regard to their responses to and treatment of WBs continues. Last year, we gave the results of our own survey to ICAC with a figure of 16 people dissatisfied with the way they had been treated. Commissioner O'Keefe asked us for names and we recently supplied those of two people who were very dissatisfied, Stan Karpinski and David Jackson. He has since said, in the course of the Ombudsman's current review of the PDA. and via various media, that they had no problem. They very much beg to differ, and negotiations are presently going on with ABC TV for publicity about the matter. "Stateline" (Friday nights) may have this item in the near future, if it has not already by the time you read this.

We are pleased that ICAC are at last conducting their own customer survey. We assume that this has arisen partly, if not wholly, in response to our challenges in newspapers and in this newsletter. ICAC had previously been relying for a rating of its performance on an old survey of the general population, i.e. based almost entirely on the opinions of people who have had no dealings with it.

Apparently due to lack of funding, the new survey is rather

limited. It is restricted to the 241 people who have made 'protected disclosures' to ICAC under the Act of the same name and only twenty of these are to be selected at random and asked questions (by phone). Although 241 is a shocking figure, and one must sympathise with their workload, one must say that this procedure contrasts hugely with that of the equivalent body in Queensland, the CJC, which continuously surveys 100% of its informants for customer satisfaction!

ICAC have told us that all were sent a letter at the end of June asking if they would be prepared to participate. By 22nd July they had received 50 positive replies, but were shortly going to re-mail the non-repliers in order to obtain as many acceptances as possible before choosing the twenty.

It is, of course, extremely important that the selection of twenty is not only unbiased, but also seen to be unbiased; also that the reporting of the results is not only done truthfully but seen to be done truthfully. Committee member Richard Blake has suggested to their Research Officer methods whereby these constraints can be adhered to without revealing the names of any clients to outsiders. A copy of his letter is published elsewhere in this issue.

# Stopping waste in a foreign aid organisation: a whistle blown successfully

By V. J. KANE

*(Vin Kane is a member of a rare species: he is a successful whistleblower! After hearing numerous tales of woe from whistleblowers, his story, told below, is most welcome. It is important to realise that he had everything going for him. He was retired and was not dependent for income from the organisation concerned. He had a career's worth of experience in the public service, with contacts among both politicians and top public servants. As well, a federal election was held at a convenient time, making politicians more willing to take up the case. In spite of all these advantages, his task was far from easy, and a less skilled, determined or resourceful individual might not have done as well. We should learn from this example and be inspired by it, but not gain the false impression that others will have such an "easy" time of it. Brian Martin)*

In November 1994, I resigned from my part-time position as project officer with the Australian Executive Service Overseas Program Ltd. (AESOP) and submitted a 30 page report to the Director General, Australian Agency for International Development (AusAID), alleging

maladministration and gross waste of public money by AESOP.

I took this action only after I had:

* seen clear documentary evidence within AESOP to substantiate my allegations;

* formed the impression that my colleagues in AESOP would not participate with me in any internal action to rectify the situation that had developed in the company;

* spoken in confidence about my concerns on separate occasions to members of the AESOP Board with no effective outcome;

* written and then considered very carefully a draft outline report recording my concerns;

* taken measures to ensure that if challenged, I could produce evidence to substantiate my allegations;

* obtained an independent and objective opinion as to the seriousness of my concerns from a person who has legal qualifications and considerable political experience;

* read carefully the August 1994 Report of the Senate Select Committee on Public Interest Whistleblowing;

* come to the view that there was no other way to reform the administration of the company, as the Managing Director was firmly entrenched, the Board complacent and the supervisory agency (AusAID) negligent;

* decided that the loss of income and workplace social contact resulting from my resignation from AESOP could be accepted and that I could achieve my objective without attracting a defamation suit.

My allegations were lengthy in detail, but the essence of them was that through a lack of diligence on the part of both the Board of AESOP and AusAID, the company was grossly misusing public funds that had been appropriated by the Parliament for overseas development aid.

Here are some of the matters detailed in my report.

* Excessive overseas travel was undertaken by the Managing Director, who in a period of two years visited 22 countries.

* Aid funds were used to pay all the travel and accommodation expenses for the Managing Director and his spouse to visit Europe, North America and Japan.

* The Managing Director was grossly overpaid relative to the

value and nature of the work and responsibility involved. His cash remuneration had increased in the space of five years from $65,000 to $100,000 (and it was revealed subsequently that these increases had never been put to the full Board).

* There was no form of financial delegation. Financial commitments, procurement and payments were controlled exclusively by the Managing Director and he made cash advances to himself without any initiating documentation.

* Capital expenditure on office equipment, in particular computer hardware and software, was excessive relative to the size and importance of AESOP.

* The representation costs of the AESOP representative in Thailand (a former Canberran) were out of proportion to those paid to all other overseas representatives. In 1992/93, he was paid $33,245 (including reimbursements) while other representatives averaged $1000 each in that year.

* Aid funds were being used to subsidise the operations and enhance the profits of wealthy private sector businesses; in many cases Australian volunteers were simply being used as a source of cheap labour.

* The lack of financial information in AESOP's Annual Report could well be construed as a deliberate attempt to conceal the way in which the government grant was being spent.

In handing over my report to AusAID's Director General, I said that I intended to keep my allegations confidential but I asked to be kept informed of the action that would follow.

## Review and audit

Late in November 1994, I was advised by AusAID that a review would be carried out into the effectiveness and efficiency of the four agencies that manage volunteer programs, of which AESOP is one. Also, a firm of auditors, BDO Nelson Parkhill, would assess the management, financial and administrative practices of AESOP.

The audit investigation began in December and by January 1995, by which time I had met with the investigators on three occasions, it was clear that matters of a more serious nature than reported in my document had been uncovered.

At about the same time, I began to have doubts as to whether the final audit report would in fact be a rigorous and comprehensive presentation, and indeed whether my allegations were being taken with the seriousness that I believed they warranted.

For example, there were suggestions that AusAID intended to increase AESOP's grant for 1995/96, and there was a proposal to give AESOP responsibility for the implementation of new overseas aid initiatives.

I also discovered that the Board had confirmed the Managing Director and his spouse travelling to Paris in May 1995, using aid funds to pay all their expenses. At a later stage, I found the Managing Director had been given a further two year employment contract, while in November 1994, the Board had formally resolved to pay legal costs for any action that the Directors or the staff might take, presumably against me, as a result of my action.

I could see the makings of a whitewash and I was determined to counter this eventuality.

On 23 March 1995 I contacted the Acting Director General, AusAID, and subsequently delivered him a letter which raised my concerns about the rigour of the audit and the attitude of the Board. To underline my determination to pursue this matter, I sought an unqualified assurance that AESOP's grant for the coming year would be reduced to the amount necessary to meet legally binding commitments.

I made it clear that if such an assurance was not forthcoming, I would pursue my allegations of maladministration and gross waste in AESOP through representations in the Parliament.

The assurance was not given and on 30 March, after meeting with me and studying a copy of my November document, Senator Jocelyn Newman, Senator for Tasmania, placed a total of 21 questions on the Notice Paper.

These questions, addressed to the Minister for Foreign Affairs and Trade, sought to confirm through the procedures of the Parliament the veracity and seriousness of my allegations concerning the management of public funds within AESOP.

On 5 April, before the questions were answered, AusAID sent me a copy of the BDO audit report. I found it to be curiously ambivalent. It concluded that operational and control procedures in AESOP were adequate to safeguard public funds but there had been numerous breaches by AESOP of the financial agreement with AusAID.

## Adverse findings

The report listed 18 adverse findings resulting from the audit investigations. Among these were the following:

* some $15,000 in expenses had been paid to the Managing Director (by the Managing Director) for which there was no

supporting documentation;

* the Managing Director had understated his remuneration in the 1993/94 financial statements by some $20,000;

* in a period of approximately three years, $146,000 had been paid to the Managing Director in the form of reimbursement of expenses or cash advances associated with his overseas visits;

* funds granted to AESOP for 'recurrent costs' had been used to acquire fixed assets, contrary to the financial agreement;

* capital expenditure had not been authorised by the Board;

* representative costs in Thailand were well in excess of any other country;

* the Board should review salaries in AESOP and also determine if the Managing Director's remuneration was excessive.

On 10 April I wrote an 8 page letter to AusAID, listing what I saw as defects in the audit report. I pointed out that my November criticisms focused on the almost total lack of accountability within AESOP, while the audit report dealt in the main with the question of accounting standards and practices.

I foreshadowed questions being raised about AESOP's accountability and the role of AusAID during the forthcoming Senate Committee consideration of the 1995/96 budget, and I warned that at one level of AESOP management, AusAID was seen "merely as the goose that lays the golden egg".

I sent a copy of this letter to the Secretary, Department of Foreign Affairs and Trade, and also to the Chairman of AESOP.

The questions asked by Senator Newman on 30 March were answered on 9 May. Nothing in the answers detracted from, or diminished the criticism in my November document, but the style and nature of the language used confirmed my earlier misgivings about the handling of my allegations and the presentation of the audit findings.

I then obtained an appointment with Senator Christabel Chamarette, of the Green Party (WA) and gave her a full briefing. The Senator attended the 1 June Senate Committee estimates hearing and asked officers of AusAID why it had been left to employees, rather than the responsible government agency, to bring to light serious deficiencies in the use of public funds by overseas aid organisations like CARE Australia and AESOP.

A senior AusAID officer replied (apparently in extenuation) that "the former employee had spent four or five years (in AESOP) collecting the information that he presented to AusAID in late November 1994". These remarks were untrue and I found them also to be offensive. In later correspondence with the Director General AusAID, I effectively disposed of this unwarranted slur.

The 5 June 1995 issue of the Australian Financial Review carried a report of the audit investigations and quoted the Managing Director as claiming that he enjoyed the confidence of the Board.

On 13 June, after a further briefing, Senator Newman placed another 14 questions on the Notice Paper, the answers to which were provided on 22 August. A slight weakening of the earlier hard line was apparent. For example, the Minister accepted that the Managing Director's remuneration "appears high".

## Further intervention

The publicity about AESOP now brought forth another intervention. Noting that the Minister had decided that an AusAID officer should be appointed to the Board of AESOP, a former Board member wrote urging him to select a woman, pointing out that there had been only one woman on the Board since the company was established in 1985.

The former Board member drew attention to difficulties experienced while on the Board, principally in being unable to obtain information from the Managing Director. For example, it was claimed that the basis of the Managing Director's remuneration was never established at Board meetings.

Senate Committee estimates hearings resumed on 23 June. I briefed Senator Chamarette and during the proceedings, she questioned AusAID officers about the degree of accountability in AESOP and the extent of supervision by officials.

The Senator placed on record in the Hansard of the Committee hearing what was in fact the key aspect of my criticism, and an important motivation for my actions, that "neither the Board of AESOP nor AusAID seemed to be aware that the public moneys handed over each year to AESOP were being used predominantly to enrich the lifestyle of the Managing Director".

In July 1995, AESOP's accountant/company secretary resigned, concerned about possible implication by association. The new appointee lasted until November, when he also resigned, as I understand it, for similar reasons.

Early in July, I had an informal meeting with the recently retired Commonwealth Auditor General. He arranged an appointment for me with senior officers of the Australian National Audit Office. I briefed these officers extensively on the situation, pointing out that public moneys were being misused by AESOP and there appeared to be little corrective action in train, either by the Board or by AusAID.

I was told that the Audit Office would see what action might be appropriate, in the context of AusAID's responsibility to monitor the expenditure and obtain a proper acquittance of the grant made to AESOP. I am not aware if in fact anything was done in this regard by the Audit Office.

By this time, it was clear to me that AusAID's tactical position was to place the whole responsibility for remedial action on the Board of AESOP. It was my view however that the Board members not only would be poorly advised by the Managing Director but also would need strengthening in both their conviction and motivation.

Consequently, on 15 August I wrote to the companies and institutions that in effect appoint the members of the Board of AESOP. At the time, these were the Shell Company, James Hardie Ltd., the Order of Australia Association and the Australian Chamber of Commerce and Industry.

With my letter, I included a three page document listing some of the serious management deficiencies exposed in AESOP and I asked that their nominees on the Board take the necessary corrective action to have AESOP put on a sound footing for the future.

I wrote again on 27 November, with a progress report on developments. I pointed to the likelihood of unfavourable publicity being directed towards those who had allowed this unsatisfactory situation to occur, where in effect, public funds were at risk. Only one of those to whom I wrote replied to me, in non-committal terms.

On 15 October 1995, the Melbourne Sunday Herald Sun published a damaging article about AESOP, under the heading "Aid Chief in the Money". Among other things, the article reported on the Managing Director's $135,000 remuneration package, the $146,000 spent on overseas expenses for himself and his spouse, and it quoted the Managing Director as saying that part of his 'out of pocket' expenses included buying the meat for the office Christmas party.

The West Australian Sunday Times of the same date carried a similar article under the heading "Aid agency charitable to its boss".

The appearance of these newspaper articles brought renewed interest in AESOP's activities from within the Parliament. On 23 October Senator Chamarette placed a further 27 questions on the Notice Paper. The answers, which were provided on 15 November, showed an emerging and welcome recognition that reforms were needed in AESOP.

A Federal election was now in the offing. It was fortuitous therefore that the opportunity arose to brief Mr Bruce Reid, MHR, the Member for the electorate of Bendigo, a marginal seat. As a result, Mr Reid placed a total of 30 questions on the House of Representatives Notice Paper of 26 October. They were answered in late November 1995. Again, the answers did nothing to diminish my criticism of AESOP management practices.

## Remuneration disparity

When the AESOP Annual Report for 1994/95 appeared, it contained for the first time since 1991 the full financial statements of the company. In those statements, it was disclosed that the Managing Director had received remuneration for the year in the amount of $137,873.

It is interesting to note that the remuneration package of the Director General, AusAID is in the order of $140,000. That officer has responsibility for a budget of $1.5 billion and a staff of 586. AESOP has a budget of $1.6 million and a staff of 9. The incongruity of this comparison appeared to have escaped the attention of those responsible for the prudent management of the funds appropriated for overseas aid.

In the Annual Report, the Chairman had written that following "complaints" by a former employee, AESOP had been scrutinised by auditors BDO Nelson Parkhill and after a very exhaustive review, the auditors did not support the complaints made.

This rather audacious and highly subjective view of the matter led Senator Chamarette to ask more questions of the Minister during Senate Additional Estimates hearings of 13 November. These questions, and the answers that were subsequently provided, made it very clear that my so-called complaints had indeed been effective in bringing about a higher level of accountability in AESOP, at both Board and management level.

In November, the auditors returned to AESOP for a follow-up review, the purpose being to establish whether appropriate responses had been made to recommendations in their previous report. Shortly afterwards, on 1 December, the Managing Director tendered his resignation, with effect from 31 December 1995. It would appear that he had lost the confidence of the Board.

I believe this occurred because of the Managing Director's inability to perceive, or accept, that the continuing public exposure of maladministration in AESOP called for major changes in his management style and behaviour.

The Australian Financial Review of 6 December quoted the Chairman as saying that "the Board has agreed on an amicable separation with [the Managing Director]". That person is quoted as saying "I have nothing to add to what has been said".

A new Chief Executive Officer was appointed on a temporary basis, pending the recruitment of a permanent appointee. As a final touch of irony, the temporary CEO approached me soon after his appointment to ask if I intended to continue my 'campaign' against AESOP!

The direct result of my intervention in the affairs of this small government-funded overseas aid agency was the bringing about of a much tighter control of the management of public funds, through:

* reforms in the standards and quality of the supervisory relationship between AusAID and AESOP (and also other similarly constituted aid organisations);

* a much greater responsibility being taken by the Board of AESOP in the governance of the company;

* the enforced resignation of the Managing Director whose standards of stewardship and behaviour in AESOP had been both abysmal and self-serving.

My intervention also hastened and gave added point to two further initiatives within AusAID:

* the establishment of a review team to report on the effectiveness and efficiency of all four volunteer programs being funded by AusAID;

* the establishment of a Code of Practice Advisory Committee, with the task of drafting a Code of Conduct to include financial accountability and reporting standards among non-government organisations funded by AusAID.

**REFERENCES**

1. Australian Executive Service Overseas Program, Report to AusAID, V J Kane, 1 November 1994.

2. BDO Nelson Parkhill, Audit Report on AESOP, 24 March 1995; Follow up Report, 16 May 1996.

3. Newspaper articles Australian Financial Review, 5 June 1995 Sunday Herald Sun (Melbourne), 15 October 1995

Sunday Times (West Australia), 15 October 1995 Australian Financial Review, 6 December 1995

4. Parliamentary Hansard Questions on Notice:
No. 2074, 30 March 1995, Senator Newman
No. 2219, 22 August 1995, Senator Newman
No. 2606, 15 November 1995, Senator Chamarette
No. 2755, 1 December 1995, Mr Bruce Reid MHR
5. Foreign Affairs, Defence and Trade Legislation Committee, Estimates hearings, Senator Chamarette: 1 June 1995, 23 June 1995, 13 November 1995.

## AESOP

The Australian Executive Service Overseas Program was established in 1981 as a joint initiative of the Australian Chamber of Commerce and Industry and the Australian International Development Aid Bureau (now AusAID). The aim of the program, which was to be funded by the government, was to assist the developing countries in this region to achieve economic growth by posting to them Australian volunteers on short term assignments.

In 1985 the program was incorporated as a company limited by guarantee (AESOP Ltd.). Membership consisted of a number of Australian companies and institutions and they nominated the Directors to be appointed to the Board of the company.

In 1991 AESOP and the Minister signed a financial agreement, guaranteeing an annual grant and placing certain accountability obligations on AESOP. In 1992, the grant was $540,000. By 1995, AusAID had increased AESOP's annual grant to $1,650,000.

## Mr V J Kane

Mr Vin Kane retired from the Australian Public Service in 1987 after a career of some 43 years in public administration. His first appointment in Canberra, in 1961, was to the position of Senior Finance Officer in the newly established National Capital Development Commission.

In 1974 he transferred to the Department of Urban and Regional Development. In subsequent moves to a variety of government Departments in Canberra, he was responsible for the provision of policy advice to a succession of Ministers on such diverse subjects as telecommunications and satellite developments, uranium mining (both environment protection and development) and Australian heritage.

He established policy for and administered a program of grants of financial assistance to State and local governments and community groups for environment protection and

heritage conservation.

Mr Kane participated extensively in international conferences and business meetings. He was the Australian delegate and Vice-Chairman of the OECD Committee on Communications and Computer Policy (Paris), delegation leader to the INTELSAT Meetings of Parties (Washington), Vice-Chairman of the Asia-Pacific Telecommunity (Bangkok) and Australian delegate to the South Pacific Commission (meeting in Noumea).

Following his retirement in 1987, Mr Kane acted as a private consultant on telecommunications policy, and from 1988 to 1994, he was employed on a part-time basis as a project officer with the Australian Executive Service Overseas Program (AESOP).

Mr Kane's academic qualifications include accountancy and public administration.

# An update on the review of the NSW Protected Disclosures Act 1994

By CYNTHIA KARDELL

The Whistleblowers Committee for the Review of the Act comprised Lesley Pinson, Alex Tees and me. The Committee put together a 15 page submission which addressed all the key areas of concern to whistleblowers for presentation at the Public Hearing which was held in the Jubilee Room at Parliament House for the three days July 2-4.

The presentation and Hearing was covered by whistleblowers Graham Wilson, Bob May and myself. Happily both Ray Masters and Greg Franks were also able to be there a great deal of the time which swelled our ranks and enabled us to be a real presence and possibly influence the course of events.

Looking back I think being there gave the Committee the opportunity to feel that they could relate to us as peers and therefore to our experiences. We certainly used the tea breaks to our advantage and after all, we three were all grey haired wrinklies from professional backgrounds and not one raving loony amongst us. Or not so that it would show anyway!

Day one was whistleblower and related ideologues' day. John Hatton kicked off. He was lucid and convincing. He commended our submission to the Committee saying that it was thorough, professional and practical (the Chairman later

complimented us saying that it was quite eloquent). Bill de Maria followed. Alex Tees (who had dropped in especially) remarked that he "was bloody brilliant" and "had had an answer for everything."

Good one Bill!!

We began the afternoon session. Initially the three of us together dealt with the Committee's questions regarding the Whistleblowers Submission before splitting up for individual 'in camera' sessions. I am not sure how we did although I believe we acquitted ourselves well enough. Simon Disney, the Research Officer to Senator Liz Kirkby, remarked only a few days ago he felt that we had presented as a cohesive professional group and that our sincerity was never in doubt.

Well done Graham and Bob.

Simon Longstaff from the St James Ethics Centre followed us mid afternoon. He detailed the many and varied services provided by the Ethics Centre which they considered could be better used if better funded and made more available generally to whistleblowers. He was followed by Chief Inspector Caroline Smith, from the NSW Police Internal Witness Support Program, who provided a fairly detailed account of the programs activities and achievements to date.

Day two was the hardcore lobbyists' day except for the first witness Mr David Bennett QC from the NSW Bar Association who had fairly strong opinions on the employer's right to choose who it had in its employ and how to go about it. He was followed by the Dept. of Local Govt. which wanted to be designated an investigating authority to enable it to oversee the Local Councils. Not surprisingly the Local Govt. Association (for the councils) was not too happy with this prospect and put up a fairly aggressive defence. The Internal Audit Bureau, contract auditors to the public sector organisations, also wanted to be an investigating authority. Their arguments were even less convincing then those put by their fellow lobbyists. Indeed throughout day two which I found to be really quite interesting I had the overwhelming impression that all the witnesses had strayed into the wrong hearing! Because when pressed none of the groups represented seemed to have any real idea of the particular requirements of the Protected Disclosures Act or how it might shape their actions.

Day three was the investigating authorities' day. Tony Harris, the Auditor General, began proceedings. He was impressive for the way he repeatedly pressed the point that an investigating authority should concentrate on the stuff of the disclosure, almost to the exclusion of the whistleblower. He maintained that the issues of whether it was vexatious, frivolous and or made to avoid disciplinary action resolved themselves if the investigator made its priority the public

interest in getting to the nitty gritty. The Auditor General also believes that an interview with the whistleblower (or even a series of interviews, plus a debrief at the end) is essential to a successful investigation. Wow! I couldn't help pondering what ICAC could be if it were to be infused with such an attitude!

Irene Moss, the Ombudsman and Chris Wheeler, the Deputy Ombudsman, were next.

They provided a polished act: one which reflected the same lucid responsible approach to the implementation of the Act as had the Auditor General. Laudably they had made the decision to make the first point of entry to the Ombudsman's Office for the purpose of a protected disclosure a senior member (unlike others) ..... none other than the Deputy ...as they took the view that a knowledge based approach would result in the most effective and efficient use of their funds and time and provide for the best overall result given the objects of the Act.

Mr R West, Commissioner of the Community Services Commission, provided a brief return to the question of an extension of protection under the Act to the Community Services before Mr Barry O'Keefe, Commissioner of the ICAC., took the stand swearing to tell the truth, the whole truth and nothing but the truth.

Mr O'Keefe proceeded to lambast Whistleblowers Australia in no uncertain terms. He irritatedly fretted how could one assist the whistleblowers when on every occasion he sought information about the ICAC's shortcomings they would not give him the names of the people so affected. He went on that when Whistleblowers finally gave him two names he checked and found that the ICAC was blameless...[not quite right Barry! - refer S. Karpinski / D. Jackson] ..... and then, how could one take the organisation seriously when the Whistleblowers' President is telling people not to make disclosures.

Curiously Mr O'Keefe had begun by saying that he had not come there to be defensive but he sure as hell was (defensive). He gave us a real pasting. And when he was asked something like 'can I take it you don't like to deal with whistleblowers' he didn't disagree!

Mr O'Keefe made no apology for any perception that the Committee might have that the ICAC had not adjusted its practice to reflect the objects of the Act. In a nutshell it appeared that coming in on budget was much more important than what it was actually spent on! And if the whistleblower could fund what amounted to an investigation under the guise of the unfair dismissals jurisdiction then that could be a real save.

Protecting whistleblowers? Well now, it just wasn't an issue. After all they had an action at law if everything went wrong for them didn't they? Meaning (I assumed) that there was no real room for complaint because after bankruptcy - well there was another life - and we could bring the blowie's to book ourselves (refer footnote), if it was all that important.

And no! .. Mr O'Keefe couldn't see how the Commission's performance could be improved beyond perhaps having a senior staff member dedicated to the task but that would unacceptably compromise the opportunities available to his staff. He turned to an assisting staff member (should he have missed something) ..... but no, he couldn't suggest much beyond a dedicated unit with special funding.

A dedicated unit, a Public Interest Disclosures Agency or PIDA , was an idea which had gained greater currency as the Hearing progressed..... albeit for different reasons. It seemed at the Hearing's end that there was a general consensus that a PIDA (say 'Peeda'), along the lines suggested by Whistleblowers but under the umbrella of the Ombudsman's Office was a real possibility. Indeed the Ombudsman was asked by the Committee to consider such an eventuality and provide the Committee with a proposal as soon as possible.

When later at the end we gathered at Parliament's gate for a debrief we agreed that there did appear to be a willingness to make changes and a genuine recognition by the Committee of the problems with what is in effect a real Clayton's act. And it seemed to us that not even an unrepentant Mr O'Keefe who appeared to be seriously out of step with his peers was likely to stop it. He may even have helped it.

We came away hopeful and glad that we had been there.

The Committee's Report is expected to be tabled in Parliament late August. We will be there.

Footnote: I should explain my use of the term 'blowie' which is commonly used to describe a big fat blowfly and a real pest in plague proportions. In the context of whistleblowing 'blowie' [or blowy] would be a person or organisation who has been blown right out of the water, had their cover blown, or was blown (as in flyblown or rotten) or was blown away (where the blowie gets their comeuppance) ..... etc

Can you imagine the headlines for instance?

WHISTLEBLOWER WIN - ANOTHER BLOWIE BITES THE DUST !

Of course 'blowie' could be a little confusing and there probably is a more apt term. Any ideas? Write in with your

suggestions.

## ATTENTION NSW WHISTLEBLOWERS RE PROPOSED SURVEY

Whistleblowers NSW wants to survey their membership in relation to a range of matters. For example:

[1] whether dismissal was by way of medical retirement, redundancy or fabricated charges etc or

[2] what investigating authority received your complaint.

We hope to gather sufficient and reliable information to address a number of issues as diverse as those of forced medical retirement and the operation of the ICAC. The initial survey will be by telephone to ascertain which category of survey you fall into. At the conclusion of a survey each respondent will be provided with a copy of the survey information recorded as provided by them.

I trust that you will assist us in this as it is incredibly important for this information to be out in the open.

## SRA WHISTLEBLOWERS

Whistleblowers dared because they cared (about the organisation's integrity). But now the big question is "does the SRA management care?"

The Auditor General's SRA Report was tabled in Parliament, the recommendations were damning and the subsequent legislative and structural changes sweeping and yet, it all has a touch of the surreal about it. Because while there is (apparently) no doubt the changes were necessary to combat what ICAC Commissioner described as a 'bottomless pit of corruption' something is not quite right.

The story lacks something. Plausibility? How and why did this come about? Where are the good guys ? There is no praise being bandied about! No boastful righteousness! Weren't the good guys part of the in team?

Whistleblower Neena Chadha knows; as do the many SRA whistleblowers who put organisational integrity before personal safety, why there are no 'good guys' to this story. Why there is only embarrassed complicit silence..... the sort that springs from a lack of intestinal fortitude to tell it as it is.

Whistleblowers NSW make the observation that the 'bottomless pit' will remain bottomless for as long as it takes for SRA management to give credit where credit is due. The corrupt and criminal will take heart at SRA inaction believing whistleblowers are fair game, everyone's mug, and soon it will be 'business again as usual.'

Whistleblowers NSW wrote to Mr Brian Langton, Minister for Transport, on July 14, setting out the basic process by which the SRA management can take a public unequivocal stand against corruption. SRA management must publicly demonstrate a willingness to make itself accountable. Whistleblowers must be publicly commended for giving the SRA its future.

Whistleblowers NSW maintain that whistleblowers cannot continue to be SRA management's guilty secret lest management be seen to be guilty ..... and not just embarrassed at not having known. As at 18 July Mr Langton was having 'the matters raised in (our) representation examined and a response will be provided as soon as possible.'

Come on SRA! Bite the bullet now.

# Whistleblowing: a celebration

A short time ago several like-minded whistleblowers began pondering the vexed question of our image. I mean the angst is all too true but there are other things. Like for example, what motivates a whistleblower and why public interest whistleblowing is so important to a civil society like ours (sorry, should read 'the civil society we would like to have'). Now we know those things, but why isn't it obvious to others?

We needed to project a positive more inclusive image; one which could be embraced by the average Joe or Jill. We cast around for ways and it wasn't too long before the penny dropped [or should I say, the whistle shrilled].

We would blow our whistle... in a very public way. We'd strut our stuff! After all if the Gay Rights Movement can do it so can we. Why not a mardi gras???

But was that our style I asked myself? Feathers, G-strings and stuff? I am not that fit I reflected moodily ... I would need months to work-out. And it is winter!

And then it was that one Tuesday night, at a Caring and Sharing meeting, one of Mozart's symphonies strayed in from the Steinway in the Church next door and jolted me back into the middle of yet another tale of woe. And I had it ... a music and word 'fest' ... in Ivan's hoose.

No one thought it a silly idea ... and when John Hatton said yes I knew it would work.

Thank you, John Hatton.

After all as Shakespeare said "the man that hath no music in himself, nor is not mov'd with concord of sweet sounds, is fit for treasons, strategems, and spoils; the motions of his spirit are dull as night, and his affections dark as Erebus: let no such man be trusted."

Do come ... and bring your family. It will be a good night ... it is your night!

7.30pm Tuesday 20 August at the Campbell St Presbyterian Church Balmain.

# Unions and the whistleblower

By GREG MCMAHON

The University of Queensland's Whistleblowers Study in its first publication, "Unshielding the Shadow Culture" (De Maria, 1994) reports on the performance of unions in support of whistleblowers in Queensland.

Unions, in the opinion of whistleblowers surveyed by the Qld study, showed the greatest level of concern towards whistleblowers (35 % of whistleblowers found the union attitude to be a very concerned" compared with the CJC's 24% and the Premier's 12%). The Unions however proved to be a most ineffective agency in dealing with disclosures by whistleblowers (although more effective than the CJC, etc); 62% of whistleblowers rated the unions as very ineffective".

In absolute terms all agencies suffer from the absence of helpful legislation in applying their concerns for whistleblowers into effectiveness in protecting whistleblowers from reprisals.

An understanding of the apparent inconsistency in the relative levels of concern and effectiveness by unions can be gained from an appreciation of the natures of unions and unionism. These natures allow unions some distinct advantages and disadvantages in assisting whistleblowers through the making of disclosures and the prevention of reprisals.

The principal difficulty that arises for unions in both the disclosure stage and also the reprisal stage of whistleblowing is where the whistleblower and the alleged wrong-doer(s) are both (or all) members of the union.

In this circumstances, a union can react so as not to become involved. The tendency not to become involved can be

reinforced by:

* an expectation of loss of membership or loss of fees for union services.

* the union culture for decision making based on a majority opinion of its members in the workplace at issue.

* fears of reprisals against employee union representatives or shop stewards at the workplace.

Unions do, on the other hand, have advantages for whistleblowers seeking assistance in the disclosure of wrong doing and/or in the prevention of reprisals:

* Unions are very experienced in the politics for dissent within organisations. Three of the nine unresolved whistleblower cases in Queensland identified by the first Senate Select Committee on Public Interest Whistleblowing as deserving of independent investigation were union officials or employee union representatives, and made their disclosures in these capacities.

* Unions are very experienced in dealing with discrimination in the workplace. Workplace representatives of unions are given legislative protection in many jurisdictions from disadvantages in their employment because of their trade union activity. Unions support the claims of its members for relief from discriminatory practices and policies under most of the categories of employees protected by Equal Employment Opportunity legislation.

Unions can also be helpful to the better administration of whistleblower protection. The years of structural efficiency and enterprise bargaining have developed consultative practices within organisations that allow unions to influence administrative processes. The administrative processes developed by organisations for the implementation of whistleblower protection policies are a key area for whistleblower interest. Even in an unfavourable legislative environment for whistleblowers, the administrative system can be influenced to the benefit of whistleblowers. Unions can be a major contributor to the development of administrative policies supportive of whistleblowers.

Thus in Queensland where the legislation on whistleblowers can be employed as a trap for whistleblowers, it was not realistic to expect public service departments to publish guidelines and procedures that were critical of the legislation. It was however possible, through union-management consultations and lobbying of human resources managers, to incorporate into published departmental procedures best practices" with respect to the HRM treatment of whistleblowers. "Best practices", demonstrated by procedures in overseas jurisdictions, and described in the

reports by bodies such as EARC in Qld and by the first Senate Select Committee, can be persuasive to HRM practitioners, nowadays very much enamoured by the term.

Best practices that can be incorporated into organisational procedures through union management consultations, include:

* advice to potential whistleblowers on matters they should consider before making a public interest disclosure.

* advice to whistleblowers on how to best protect themselves from reprisals in their usual forms.

* actions to be taken when the Chief Executive is involved or has been compromised in the wrong doing or the reprisal.

* Inclusion of whistleblowers on an in-house whistleblower support group.

* Investigation procedures where the Investigating Officer

- has powers to take statements and documents

- has powers to require officers to answer questions and produce documents

- is directed to apply the standard and onus of proof set out in the relevant legislation

- is directed to follow the rules of natural justice described in an addendum to the terms of reference for the investigation

- is directed to give reasons for findings, with a description as to what constitutes "giving reasons".

Whether on balance a whistleblower or potential whistleblower is well advised to take their matters to their union is an assessment that can only be made with a knowledge of the union. This is true for whistleblowers in taking their matters to unions, or to Ministers, or to MLA's/MHR's/Senators, or to police, or to the permanent head of a public service department.

This paper is offered as a discussion paper for conference participants on the role of unions in whistleblowing within the workplace.

# Report from Jean Lennane, Vice-President

## NSW Police: The saga of the Royal Commission continues

WBA has made a submission for the final report of the Commission, on suggested methods of reforming the NSW Police Service - a mammoth, if not impossible task. WBA respresentatives were forced to withdraw from the Internal Witness Advisory Council in June, after the Acting Commissioner, Neil Taylor, decided to pursue an appeal against a Compensation Court finding that was heavily in favour of police whistleblower Tony Katsoulas. (The Court judgement said things like: "To say the investigation appeared to have resulted in a hasty conclusion would, I think, be the least disturbing way to put it. I found, from the material which has been provided to me, serious matters of concern about the evidence given...The Court...found that Mr Katsoulas was indeed attacked as he claims and...at the time he was in execution of his duty...The other thing I wanted to say, and say on the record, is this, that in view of the nature of the evidence and the nature of the defence raised by the Commissioner of Police, I intend to refer the whole of these papers to the Royal Commission.").

The A/Commissioner had also failed to do anything towards the public recognition of police whistleblowers which we had suggested was an essential step - and also a very inexpensive and easy one - in showing police and public that times have really changed, and whistleblowers will really be supported and protected from the top down. In our letter of resignation to the Police Minister on 19 June, we said we would be happy to reconsider our decision if the new Commissioner (starting in September) wanted a genuine change of direction. As of 2 August, we have not had a reply. Our stint on the Advisory Council was very valuable in getting the research started (it is powering ahead, with a very good external researcher in charge), and in giving us the opportunity to make a public noise about the Katsoulas matter when it became clear that as far as the top heirarchy were concerned it was still open season on whistleblowers. It also sadly confirms that while police words sound a lot better than they did, their actions haven't changed.

## RIPAA Conference

I was asked to speak on behalf of WBA at a two-day conference on Investigation Techniques, 25-26 June, run by the Royal Institute of Public Administration Australia in conjunction with ICAC and the NSW Ombudsman. The conference was very interesting in its own right, and attracted nearly 200 registrants. Charles Willock - who went on the first day, and made his presence felt by asking some very curly questions - and I, have copies of the program and some of the papers given, if anyone is interested. Potential whistleblowers should be aware of the types of security now available for protecting documents from being leaked

anonymously. These are mainly being used to stop Cabinet Ministers from leaking, being too expensive for most government departments. They include photocopying on specially numbered paper, so that if, for example, the set that was leaked has the number 3 embedded in the paper, that would identify a particular Minister as the source. There are also more complex computer programs which put inconspicuous changes in spacing and layout in different copies, such that, if 40 per cent of a document is reproduced in a newspaper, the source can be identified. WBs should also be aware that putting things in the 'trash' in a computer does not delete them altogether - they can be retrieved by someone who knows what they're doing.

Apart from the interest of the conference itself, our presence I thought was significant in showing an increasing acceptance of WBA by the mainstream; although the feeling I had from most of the registrants was of polite but wary tolerance of an exotic and potentially dangerous animal. However, we were given a good hearing, had some impact, with a great demand for our information leaflets, and got paid $250 for participating in a "Hypothetical" at the end of the conference, which I have passed on to our Treasurer.

## Meeting with the Federal Attorney-General's minder

In early June, WBA representatives had a meeting in Sydney with Melanie Grainger, personal assistant to A-G Darryl Williams. This was to find out the new government's intentions regarding WB protection legislation. Ms Grainger was pleasant and helpful, but there seemed to be no intention to proceed with the recommendations of the Senate committees, despite Chairman Jocelyn Newman's presence in the new Cabinet. There seemed to be some intention to proceed with something, some time, but they look like starting in a vague way from scratch. She also was unaware of any post-election correspondence about Mick Skrijel, which seems to have by-passed the Minister's office. Both matters are now being pursued with Mr Howard.

## Update on NSW police whistleblower Debbie Locke

Unfortunately the letter to Justice Wood on Debbie's case missed the last edition of The Whistle owing to technical problems. The letter in part read "You may not be fully aware of the unfortunate and potentially tragic outcome of Deborah Locke's appearance before the Commission two weeks ago. She was in the witness box testifying for two days, as expected; then cross-examined for four days by a succession of barristers (six of them) representing police she had named in her evidence. This was not expected, particularly since all of them were permitted to cross-examine her extensively and

repetitively on a wide range of material of no direct relevance to their particular clients. The cross-examination appeared to be co-ordinated between them in an attempt to break down her credibility, and presumably herself, in the full knowledge that as a result of her whistleblowing she had previously suffered a major depressive illness, and an early miscarriage.

"As a direct result of her experience, she developed pneumonia and subsequently septicaemia, went into labour prematurely, and delivered a baby boy. He was of only 26 weeks' gestation, weighing 1.1 kilos. His condition so far is stable, but the chances of survival at that stage are only around 60 per cent, and there is a greatly increased chance of brain and other damage in the long-term...".

Our problem was not that Debbie was cross-examined at all, but that it was so far out of proportion to the length of her evidence. We had a prompt reply from the Commission, and although in their reply they pretty much denied responsibility for what happened, the next whistleblower to give evidence, Ken Jurotte, had a much more reasonable time - half a day of cross-examination following two days of testimony. And we're delighted to be able to report that baby Hayes after his shaky start now weighs 2.6 kilos, has done well in hospital, and should have gone home by the time you read this.