"All that is needed for evil to prosper is for people of good will to do nothing." Edmund Burke.

The Whistle

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Ex Auditor-General tells how the courts blew the great government cover-up.

Tony Harris (NSW Auditor-General until 1999, now an academic and AFR investigative reporter) tells of the 'Secret State: How the great government cover-up was blown by the courts', AFR 17/1/2000, page 14. These ideas were first presented in the November 1999 edition of Agenda, a publication of the University of Canberra.

Australian citizens have no right to government information and Australian governments are only too happy to keep it that way. In a special series beginning today, Tony Harris reveals just how much is being hidden but how the courts are fighting back and forcing a bit more accountability upon an unwilling Executive.

Michael Egan, NSW Treasurer, made an important contribution to public life when he refused to provide State documents to the Upper House of the NSW Parliament.

He might have thought that the Legislative Council, the weakest house of parliament in Australia, would accept the Government's decision.

Instead, the refusal to provide documents to the council led to three court actions in which the NSW Government - with the Commonwealth, Victorian, West Australian and South Australian Governments intervening - argued against the Parliament's right to know.

The three judgements affirmed the NSW Legislative Council's right to know. They confirmed the historical relationship between government and parliament in our system of responsible democracy.

The Government is responsible (that is accountable) to Parliament -and it must provide information required by Parliament so that it can be held accountable.

The Carr Government was not the first to reject an Upper House demand for information. A Senate committee request to see the Federal advice on foreign proposals involving the take-over of the John Fairfax Company, publisher of *The Australian Financial Review,* was rejected by the Keating Government in 1994.

The then Commonwealth treasurer, Ralph Willis, ordered public officers not to disclose to the Senate committee any information about the advice they provided to the Government.

The Senate committee huffed and puffed but did not test its powers to require the information from the Government.

And the Carr Government is not the last to decline to table papers. The Chief Minister of the ACT, Kate Carnell, declined for some time, but agreed last month, to table contracts for the use of its Bruce Stadium.

But the Carr Government was especially bold in its claim that the Government did not have to provide any documents to the Upper House. The refusal showed the Government had no clear understanding of the Government's need to be accountable to Parliament in Australia's system of parliamentary democracy.

If the requested documents were sensitive, it was only because of the political embarrassment the Government would face should they become public. One lot of requested documents concerned the Government's claim that it saved money in the restructuring of its education portfolio.

Some members of the Upper House suspected that the claims were poorly calculated. The Government saw no need to expose its arithmetic to parliamentary scrutiny.

Another set of papers related to the Government's decision not to allow gold mining at Lake Cowal.

Some suspected the decision was eccentric and only nominally based on environmental factors, as was publicly advanced.

The Upper House wished to see the consultancy report that recommended the level of rent to be charged for Fox Studios' use of the former Sydney Showground site.

The Government did not claim these documents were immune from presentation because their release could harm the State; it did not claim that they were protected because they were legal documents; it did not claim immunity because they were Cabinet documents, although some were. It merely said that the Upper House had no right to demand any government document.

The former premier of Victoria, Jeff Kennett, could safely refuse to table in Parliament State documents concerning the Crown casino or ambulance dispatch tender processes because his government controlled both Houses.

Kennett was not going to lose any parliamentary vote on the issue, he controlled Parliament, and he did not comprehend that he would lose electoral votes.

But the NSW Upper House has not been under Government control for many years. It was able to test the Government's resolve and its own powers by asking the courts to decide whether it had the power to demand these documents.

Bret Walker SC, who appeared for the Legislative Council in the three hearings, with success, said the matters heard by the Appeal and High Courts involved the powerful mix of "history, politics and the law where the courts would not be bound by authority, but would be the authority".

The case was first considered before three justices of the NSW Appeals Court. The Court accepted that, in the absence of legislation, the Upper House had such implied powers as it needed to do its job. It then agreed

that the Upper House had two important roles: to make laws and to oversee the work of the executive government.

In a judgement significant for its affirmation of democracy, Chief Justice Gleeson said the capacity of the Upper House "to scrutinise the workings of executive government, by asking questions and demanding the production of State papers, is an important aspect of modern parliamentary democracy. It provides an essential safeguard against abuse of executive power."

The Appeal Court ruled that the Upper House could demand State papers.

The Carr Government, unimpressed with arguments about democracy, appealed to the High Court.

The leading judgement of three of the six High Court justices who considered the case added to Gleeson's contemporary view of the term "responsible government". While the NSW Government under Premier Bob Carr often sees the Upper House as a hindrance and a fetter to government programs, these justices quoted the view that the Government's primary responsibility is owed to the Parliament.

They quoted John Stuart Mill's fundamental 1861 paper, *Considerations on Representative Government,* which said ***one of the legislature's functions is "to watch and control the government: to throw the light of publicity on its acts".***

In his separate but supportive judgement, Justice McHugh said one of the most important functions of a House in a legislature under the Westminster system ... is to obtain information a state of affairs in their jurisdiction so that they can, where necessary, criticise the ways in which public affairs are being administered and public money is being spent".

Parliament has a right to scrutinise executive documents …

Former NSW Chief Justice Gleeson. '[The capacity of the Upper House] to scrutinise the workings of executive government by asking questions and demanding the production of State papers, is an important aspect of modern parliamentary democracy. It provides an essential safeguard against abuse executive power.

High Court Judge McHugh. 'One of the most important functions of a House in a legislature under the Westminster system ... is ... to obtain information as to the state of affairs in their jurisdiction so that they can, where necessary, criticise the ways in which public affairs are being administered and public money is being spent.'

… but the case on Cabinet documents remains open.

Chief Justice Spigelman. 'In the Constitution of NSW, each House of the Parliament is entwined in a symbiotic relationship with the executive arm of government. Ministerial responsibility is one of the incidents of responsible government. It is by means of this relationship that the Executive is responsible through Parliament, to the electorate.'

Justice Lancelot Priestley. 'No legal right to absolute secrecy is given to any group of men and women in government; the possibility of accountability can never be kept out of mind, and this can only be to the benefit of the people of a truly representative democracy.'

Justice Meagher. 'The Cabinet is the cornerstone of responsible government in NSW, and its documents are essential for its operations. That means their immunity from production is complete.'

To a government that thought it should control and manipulate the legislature until it lost an election the idea that democracy depended on a watching, criticising Parliament must have been difficult to accept.

But the High Court's view reflected its earlier judgements on the role of Parliament. In 1920, the High Court said one of the duties of member of parliament was **"that of watching on behalf of the general community the conduct of the Executive, of criticising it, and, if necessary, of calling it to account in the constitutional way by censure ".**

According to the High Court, the Upper House of the NSW Parliament had the undoubted power to demand State papers. This was a judgement supported by each of the six justices.

To those concerned at the damage caused in the past to Australia's democratic institutions by political parties, this common-sense view of the role and place of Parliament was a relief.

But neither the Upper House nor the Government knew the extent of this inherent Power of the Legislative Council to demand government papers.

In October 1998, the Council demanded documents about Sydney's contaminated water supply. The Government decided some documents would not be tabled because they enjoyed immunity against Parliament's demands. The argument returned to the courts.

This hearing before the NSW Appeals Court is said to be the first time, in Australia or the United Kingdom, that a court has been asked to consider whether there is any limitation on the power of a house of parliament to demand papers from its government.

'The Government argued it was not, obliged to provide documents when their release would harm the State. These documents included papers that could be used in civil actions against the state if their contents were known.

The court found against the Government; the Government had to provide even this category of document. It was a matter for the Legislative Council to protect such papers from public view, if it thought that was desirable.

The State Government argued that documents enjoying legal professional privilege did not have to be provided to the Upper House. But the court disagreed. The protection afforded legal documents depended on the relationship between those who had the documents and those who wanted them.

In the case of Parliament, its role to oversee government could be frustrated for no persuasive reason if such papers were withheld.

The justices of the Appeal Court did not agree, however, on whether the Legislative Council could demand access to Cabinet documents.

Walker thought that the NSW Appeals Court, although influenced by practice and convention, wished to leave room in its judgement for further development. In some matters, Walker said, it was better that the law not be so definitive as to circumscribe room for change.

Justice Meagher said that Cabinet documents were completely protected because the Legislative Council could not compel their production without subverting the doctrine of responsible government. This view reflects the concept of Cabinet solidarity or collective responsibility which allows a minister to propose a policy in the knowledge that if it succeeds fellow Cabinet ministers will defend that policy.

Meagher's views appear to be unique. They run counter to legislation that gives a theoretical right to ordinary Australians to access some Cabinet documents.

Moreover, Meagher would presumably not preclude the courts from requiring access to Cabinet documents and discussions, as occurred in the perjury case involving the former WA Premier, Carmen Lawrence, notwithstanding his view of the implication for responsible government.

Meagher gave complete protection against the disclosure of Cabinet documents. He thought that "in the realm of Cabinet documents there is no room for holding that time will whither them". This also appears inconsistent with the customary release in Australia of most Cabinet documents that are 30 years old.

In this arena, the views of the Lord Chief Justice of England, Lord Widgery, as quoted in Neal Blewett's A *Cabinet Diary,* appear more accommodating to the needs of modern democracy.

In considering whether *The Diaries of a Cabinet Minister,* written by R.H.S. Crossman, a former UK Cabinet minister, infringed secrecy laws, Widgery concluded that: -There must however be a time limit after which the confidential character of the [Cabinet] information will lapse. "He calculated this to be 10 years and three elections, after which he did not believe -publication would in any way inhibit free and open discussion in Cabinet."

Had the Lord Chief Justice been considering Parliament's rights to know instead of the public's rights, we could expect him to be more generous again.

Neal Blewett argued that -severe restrictions on knowledge are contrary to the national interest".

In NSW, Justice Priestley's conclusions were at odds with those of Meagher. The Upper House could demand access to all Cabinet documents. In his view, it would be invidious if the courts could require access, as a particular court case might warrant, while precluding Parliament from having access in order to acquit its important functions.

Chief Justice Spigelman followed a view closer to that proposed by Meagher. Parliament had a power t demand access to Cabinet papers - but not to documents where access would be inconsistent with the doctrine of collective ministerial responsibility.

Spigelman's and Meagher's decisions are inherently unstable. They incite the Executive to manipulate the production of Cabinet documents in an attempt to limit the number of documents liable for production to the Upper House.

They lead to the prospect that the courts will be enmeshed in arguments about what Cabinet documents are open to the Upper House and what are not. The courts will thus be called to adjudicate on what is essentially a matter for political judgement.

The judgement seems not to accommodate the circumstance of a minority government being required to table Cabinet documents in the Lower House. Would the courts say a Lower House of Parliament could not vote down a minority government just because it declined a demand to table such papers?

But neither the Government nor the Upper House appealed.

After three court hearings and judgements from 12 justices, there was unanimous judicial agreement that, under Australia's system of responsible government, the Upper House had a right to know about the activities of the executive government

That right meant Parliament could demand any document it wished except, arguably, those that reveal "the actual deliberations of Cabinet".

At least Parliament has a right to know in our system of responsible democracy.

Commercial-in-confidence Vs the question of trust.

Australian governments have long objected to disclosing their contracts with the private sector. They try to justify this secrecy by claiming that contracts contain material with "commercial-in-confidence" value to the private sector.

They say the value would be lost if contracts were published. But often the real reason for government secrecy is to avoid accountability.

This secrecy is not limited to the Commonwealth. It is because of this claim of "commercial-in-confidence" that the previous Kennett government in Victoria refused to publish details of a host of government deals, including the price paid for holding a grand prix motor race in Victoria.

It also declined to table contracts for computer systems for dispatching ambulances and it prevented the publication of contract details concerning Victoria's private prisons.

The NSW Government is equally reluctant to publish contracts. Although organisers of the private sector Atlanta Olympics published many of its contracts and the organisers of the Athens Olympics released their main contracts, the NSW Government refused for a considerable time to publish contracts it had with the International Olympic Committee or with the Australian Olympic Committee.

Indeed, those contracts were exempted from the State's freedom of information legislation. Eventually, the Australian Olympic Committee released its contract with the State and, after the IOC reaffirmed it had no problems with the tabling of its contracts, the Government released them.

While the NSW Government does not, by and large, release its contracts, it has agreed to publish audited summaries of contracts dealing with the private provision of public infrastructure, such as private toll roads.

This practice has also been adopted in South Australia, but nowhere else in Australia.

Wheeling and dealing in the dark.
Few government contracts have been released without pressure. Notorious contracts that were only released after pressure, or which governments still refuse to release, include:
The Commonwealth's Job Network contracts.
The Commonwealth's information technology contracts.
Sydney Water's bulk water filtration contracts.
NSW Roads and Traffic Authority contracts on the private provision of four public tollways.
Victoria's contract for the conduct of the Grand Prix.
South Australia Water Corporation contracts for management of water and waste water.
South Australia's prisoner movement contract with Group 4 Correction Services Pty Ltd.
NSW contract with International Olympic Committee.
NSW contract with Australian Olympic Committee.

Publishing summaries gives the public some idea of the main provisions of those agreements, as judged by the department and auditor. But it denies those who have a particular interest in facets of the agreements, for example, the environmental requirements to be met by the private sector, to comprehend those details.

This Australian attitude is not shared by all western countries. In particular United States governments consider that the public has a right to know about the details of public contracts. As soon as they have been signed, they are published.

They do not accept that there is any residual value to the private sector once the agreements have been entered.

There is also growing scepticism in Australia about the soundness of commercial-in-confidence arguments advanced by government as a reason not to release contracts.

A federal parliamentary committee charged with examining this issue concluded that those asserting the existence of commercial-in-confidence qualities had the onus to prove that this was valid.

The committee thought it was too open to government to make these claims when it merely wished to avoid proper accountability and scrutiny.

The Victorian Parliament's Public Accounts and Estimates Committee has also been looking at this subject. Its report has been held up by the 1999 general elections, but it is thought to hold a view similar to that adopted by the federal committee.

There are also signs that the private sector is becoming more relaxed about the publication of contracts, once they have been executed. Representatives of major construction firms advised the NSW Government that concern about excessive secrecy was starting to reduce the capacity of the private sector to assist governments to provide services to the public.

If government took this private sector advice and if it followed the views of these parliamentary committees, the release of government contracts after the negotiations had been finalised would help to re-establish some of the trust between government and the electorate, trust that was lost by government secrecy.

Private life of a public servant. The High Court said in 1997 that there was a limit to the power of the Government and Parliament to withhold information from the Public. But this has not stopped the Commonwealth from using laws to stop public servants from, disclosing information.

The Federal Crimes Act, admittedly passed well before the High Court opinion, provides a penalty of two years' imprisonment if public servants disclose Commonwealth information which it was their duty not to disclose.

The act allows public servants 'to disclose information if they have lawful authority or excuse, but they have the onus to prove they had that authority or excuse.

Revised Public Service regulations, made in December 1999, give public servants even less room to disclose government information. A public servant must not, except from duty or with the express authority of the head of the agency, "disclose, directly or indirectly, to .any person any information about public business or anything of which the employee has official knowledge".

This regulation is one of the first made by the Government under its new Public Service legislation. It shows the Government is adamant about restricting flows of information to irrespective of any views of the High Court about democracy and representative government.

It is possible, indeed likely, that the Crimes Act and regulation are invalid. Both ignore the High Court ruling that the Government and Parliament have only limited powers to withhold information from the electorate.

Whistleblowing does not translate & has no place in the Mediterranean diet.

Where the Whistle Never Blows: How to be politically incorrect in Spain. Carolyn Hayes, long time WBA member, reports from medical conference in Spain (Email: Carolyn. Hayes@pgrad.arts.usyd.edu.au).

I thought everyone know about 'whistleblowing'. Didn't you? Well, read on ...

In September 1999 I attended the joint conference of the European Association for the History of Medicine and Health, and the International Network for the History of Public Health, held in Spain. I presented a paper based on my PhD research into whistleblowing, suppression of dissent, and the Chelmsford Hospital tragedy.

I was first alerted to the possible incongruence of my topic with the intellectual milieu of the conference whilst en route to Spain from Italy. Here I met a fellow conference traveller, Professor Renato Mazzolini of Trento University. He was a charming Italian gent who had bad news for me. On learning of my topic he warned me that the audience would not understand my paper.

Of course, I could not believe him. The possibility that this might be true was unbelievable to me! Not only had I assumed that most thinking folk across the globe knew about whistleblowing, but the image of presenting a foreign topic to an audience already handicapped by English as a second language left me aghast! My hope that Renato was mistaken and an ivory-tower academic who moved in unenlightened circles, soon crumbled as his knowledge and astuteness became evident.

He explained that central and southern Europe was unfamiliar with the concept and practice of public dissent, and pointed out that Spain remained in the throes of the Franco era and Italy still struggled with government corruption. Whistleblowing, he said, was not discussed in academic circles, and in fact, he had not oven heard the metaphor before.

Pre-conference chats with participants on arrival in Spain confirmed he was right. Shock, horror! Whistleblowing was indeed foreign to these folk! Now I panicked. In the hope of salvaging the situation I heeded Renato's advice and amended my paper. I concentrated on a description of whistleblowing and presented some corresponding overheads and some European examples.

But it didn't help. I found myself presenting to an audience of blank faces, devoid even of the occasional nod, concerned grimace, or note taking. Then I spied a Brit in the audience and tried telepathically to elicit support from him. Surely he will rescue my credibility, I thought. But no such luck. He later told me that he also had little understanding of whistleblowing, I reminded him of Britain's recent, lengthy, and highly publicised Bristol Infirmary scandal and its prominent whistleblower, but was astounded to learn that he had not really associated the scandal with the concept of whistleblowing.

Question time brought forth one brave soul, "Was- the meaning of whistleblowing akin to a referee on a sports field blowing a whistle"? he asked. It was then that I realised that this audience, comprising predominantly French, German, Netherlands, Italian, Spanish, and South American delegates, appeared not to even conceptualise the term whistleblowing, just as we would not have ten or fifteen years ago. But, I was still hopeful. I told myself that the audience was just shy, and felt sure I would be approached later for discussion. Yeah - in my dreams!

My bruised ego (from failing to impress and dazzle my audience) began to recover as I immersed myself in the delights of post-conference travel.

Whilst backpacking for some weeks I also sought insight and ruminated on the reasons why whistleblowing was a foreign concept in the region.

My starting point was the rise of whistleblowing as a concept within a culture. What factors are influential in this and how might these relate to southern Europe? The first factor relates to a *culture's political, ideological and* religious status. Until quite recently central and southern Europe was subject to oppression and unrest in all three realms. Brutal political and religious wars, regimes of dictatorships and monarchies, repeated overthrows, and religious persecution were the order of the day. In this environment dissent was outlawed and the instability, turbulence and human suffering resulted in mistrust, fear and a subservient and unquestioning attitude toward authorities. The continuing "church and state" model of government and power further complicates this with the rise of conflicts of interest and loyalties in the populace, particularly in questions relating to public morality.

A second factor is the prevailing political/social model. A rigid class structure and deference to hierarchy divides rather than unifies a populace. Groups confine their concerns to those of their own class, and the lower groups are subservient to higher groups and excluded from public administration, communications, and education. Whistleblowing requires both the ability to hear about the problem at hand and to apprehend it. More importantly, a further requisite for whistleblowing, the notion of "public interest", is hindered by class structure due to the failure of development in the concepts of unity, equality and equity.

Class-consciousness was evident at the conference where the use of official titles and surnames operated (even when socialising), and there was little encouragement to move across groups. My use of first names along with my case and readiness to approach and talk with everyone, whether professor or student, would have appeared brash, although common practice in Australia.

A third factor relates to the *individual versus collective good- the* domination of individual "family" rules and concerns over national ones. In southern Europe there is a long tradition of family domination and distrust of those outside the family. The concerns *of the family* override the concerns of *government, the rule of law,* and notions of national community or common good. In fact, the administration of some nations, such as Italy and Spain, seems organised to accommodate this historical feature, resulting in a multitude of differing and opposing kinship states within one nation. Italy, for example, remains subject to fierce family warfare, particularly in the south, and Spain remains divided on who is a true Spaniard. Further, in a family-comes-first culture problems are commonly dealt with by the family covertly and illegally, and this practice, in a pragmatic sense, cancels the need *to blow the whistle.*

It seems to me that these *three factors* combine to hinder the emergence of whistleblowing in *quite* fundamental ways. First, they obscure the visibility of a problem thus preventing recognition of it. Second, they effect a myriad of obstacles to taking action on the problem. Whistleblowing, therefore, is obstructed by a negative influence on the ability to both recognise a problem and to take action on it.

Recognising the problem. In most instances those of us who have blown the whistle in Australia wore not concerned *by why we* were doing so. The common goal of the common good was what was at stake whether the concern related to health and safety, maladministration, fraud or

corruption. For example, in the case of Chelmsford Hospital, the whistleblowers knew that the reckless and unrestrained use of a lethal medical practice was In breach of their rights and expectations, and inconsistent with the norms of their society. They further knew that this related to all Australians.

It follows, therefore, that recognition of Chelmsford Hospital as a problem would have be greatly hindered, if not precluded, it Australia had lacked the concepts of unity, equality and equity, and the notions of common good and public interest. Our comparatively high health standards further aided this recognition which would be far less likely in a culture where low standards were the norm or accepted. However, even in the presence of recognition, taking action may be out of the question.

Taking action. This Step would seem to me to require some sense of entitlement to take action and a trust in the curative, reformative, or remedial forces in our society -perceived or real, effective or not. Such may be expressed in a variety of ways, such as a trust in a God that will put things right, a trust in the forces of good, belief in one's professional code of ethics, confidence in a previously trustworthy manager, or trust in the government. The whistleblower at some level trusts that someone will *hear and that something will get done.* The fact that this may prove naive or erroneous is immaterial because it is the belief that facilitates the whistleblowing action.

Action is unlikely in an environment dominated by class barriers (where people confine their concerns to their immediate class situation), mistrust of outsiders, and a mistrust of authorities generally. There is no point to whistleblowing when it is *known* that nothing *will get* done, that there are no official avenues such as public authorities, that *the* person will be subject to punishment, and that media coverage will not occur. Probably the greatest hindrance to the emergence of whistleblowing is Europe's devotion to past traditions, ideals and methods, An inward-looking disposition, romanticising the past, and intellectual complacency clearly results in non-progressive cultures.

It's certainly a humbling experience for the researcher to discover the unexpected. In this case, that a phenomenon that we in Australia now accept as integral to the political, ideological and social reform process, remains unheard of in some vastly populated regions of the first world. Brian Martin, however, was not quite so surprised *to hear of my* experience. Whistleblower organisations, he says, are known to exist only in the USA, Britain and Australia. In terms of campaigning and providing information and support through organisations to which whistleblowers belong, Australia leads the world. On hearing the latter, my ego recovered fully!! So, here I cease my intellectual musings on ideas arising from a *novel* experience and leave you with a postscript ....

As a traveller to the region I was not disappointed. From the ruins of Home and Pompeii, the grandeur of Spain's Moorish history and rugged Sierra Nevada, to the enchanting faded glory of Lisbon.

My most otherworldly experience? - Camping in the Western Sahara (Morocco) with the Berber and Bedouin peoples. My most humbling? - Having the food stolen from my plate by street kids in Marrakech. All are highly recommended!

UK opens up the prospect of ‘post-separation’ workplace litigation.

The following text is a synthesis of two recent UK newspapers articles detailing a precedent for ‘post-separation’ workplace litigation. The articles are:

1. **Reference snub costs firm £200,000. Alex O'Connor, Times (UK), 28/1/00.**

2. **Payout to woman ‘crucified' by ex-employer: £200,000 for reference refusal. Paul Keels, The Guardian (UK), 28/1/00.**

Belinda Coote, 38, has been fighting for six years against the Granada Hospitality leisure company, fearing, that her career was being wrecked because she could not get interviews for a new job. (Times)

A former bowling centre manager as won almost £200,000 in compensation in a landmark victory over a former employer that refused to give her a reference for another job. (Times)

Mrs Coote, left her job as manager of an east London bowling centre run by Granada Hospitality Ltd in 1993. She alleged that she had been sacked for getting pregnant and her employer paid her an out-of-court settlement of about £11,000. After she had had her baby she tried to get another job. "But Granada refused to supply references when repeatedly asked by two employment agencies. (Times)

Mrs Coote subsequently found that her attempts to get work were being "crucified" by Granada, which refused to supply employment agencies with relevant information regarding her record at the firm. (Guardian)

"There was no justification for what they did, other than the fact that I had taken them to a Tribunal," Mrs Coote said. "I knew I was being victimised so I decided to seek justice because my career was being crucified." (Times)

Mrs Coote launched her second industrial tribunal claim against Granada in 1995, alleging that the company's refusal to give her references was victimisation because of her earlier lawsuit. The case was thrown out on the basis that the Sex Discrimination Act, under which she had brought the claim, did not apply to events taking place after an employee had left. However, the Employment Appeal Tribunal agreed to refer her case to the European Court of Justice, which held that the Act ought to benefit former employees as well as serving ones (ie the Sexual Discrimination Act was incompatible with European law, and that Mrs Coote had won her case). (Times)

Although there was no requirement for firms to provide references for former staff, Mrs Coote was then able to claim under the Act that a reference had been refused as retaliation for her previous sex bias hearing. The case was referred back to an Industrial Tribunal in London, which found in Mrs Coote's favour, and lawyers acting for her agreed an out-of-court settlement. A compensation package of £195,000 was awarded, mostly for lost earnings. (Times)

Mrs Coote, who has one son and is working again, was delighted at the Compensation, the bulk of which covers loss of earnings. (Guardian)

"It's been a long struggle. At the time I had little choice but to go to tribunal because couldn't get work. In total I was out of work for two years, and in lesser-paid jobs for much of the rest of the time. (Guardian)

"I carried on with the action because I knew I was right. The fact that the law provided no protection for people also spurred me on." (Guardian)

"I am really pleased this is now over after such a long fight," Mrs Coote said. "It sends a clear message to employers that they cannot continue to victimise former employees by not providing a reference for discriminatory reasons." (Times)

The Equal Opportunities Commission (EOC), which backed the case, said that the award was a "landmark" settlement that set a precedent for other people denied references. (Times)

Julie Mellor, the Chairwoman of the Commission, said, "It takes courage to fight cases like this over a long period of time and I warmly congratulate Belinda for her persistence. It also sends a clear message to employers, yet again, that equality pays and discrimination costs." (Guardian)

The Compensation, negotiated by solicitors acting for Mrs Coote and Granada, takes into account tax and should give Mrs Coote a net £110,000. The first £20,000 compensates for damage to her feelings, and the remainder is for loss of earnings over six years. (Guardian)

She had been earning "in excess" of £20,000 at Granada, and claimed to have been forced to take less responsible and less well paid jobs as a result of victimisation. (Guardian)

Pauline Matthews, the Equality Commission's solicitor who took on the case, said: "This is a highly significant legal victory for Belinda, the EOC and others. It means that discrimination arising after the end of employment is actionable and is now covered by the Sex Discrimination Act". (Times)

In a statement, Granada Hospitality accepted mistakes had been made, and said it fully accepted the findings of the tribunal and apologised to Mrs Coote for the "breakdown in procedures that led to this unfortunate situation". (Guardian)

It went on: "Granada seeks to be one of the UK's responsible employers, and had led the way in implementing employment measures beyond the letter of the law particularly in equal opportunities ... we have taken steps to ensure that mistakes made in this case never happen again." (Guardian)

The GMB union, which also backed Mrs Coote's claim, commented that references were still vital in applying for jobs. "Most companies ask for two or three. A good reference can be all-important," said a spokesman. "Many potential employers want the word of another manager who has experience of the candidate, and see it [the reference] as a failsafe. (Guardian)

"If they don't get a reference or a previous employer refuses to supply one, it is assumed to be a sign that there has been a problem with the person."

Foreseeability: Employer liable for work stress causing depressive illness.

Work stress caused major depressive illness: ***The fact that the employee had been granted stress leave proved that the employer had been aware of the risk of psychiatric harm.*** **CCH OHS Update Newsletter 9/98 dated 8/10/98, pages 9 & 10.**

Queensland - Negligence. Supervisor knew about employee's stress but did nothing - Risk of injury foreseeable - Better management, training and communication could have significantly reduced risk of injury -Employer liable - Employer also in breach of Workplace Health and Safety Act 1995, sec 9 - $470,252 awarded in damages.

A corrective service employee since 1980 found that he was becoming stressed in 1991, especially by duties carried out as relieving General Manager. In February 1992, he asked his supervisor not to appoint him relieving General Manager again. A psychologist recommended counselling but the employee thought it might be detrimental to his career and did not seek it.

Despite the concern expressed by the employee. He was made relieving General Manager on two further occasions in 1992 because of staff shortages. By December 1992, he took four weeks sick leave, & in June 1993 he took extended leave until August.

The employee continued to seek help from his supervisor in respect of the adverse staff/inmate ratio and the difficulty in developing operational plans but did not receive any. In December 1993, he bypassed his supervisor and sought assistance directly from head office. He thought he was breaching the Corrective Services Act 1938 by taking in more inmates than the prison was designed for. He wanted authority for it in writing from his employer. In the absence of such authority, he was concerned that he would be held accountable for any adverse consequences of the overcrowding, which included an increase in assaults on prison officers by prisoners.

On 13 January 1994, the employee ceased work on medical advice though he expected to return after treatment. His condition was diagnosed as major depressive illness. Examinations confirmed that the psychological damage was caused by the workplace practices imposed by and the lack of remedial action taken by his employer. The employee was not able to return to work. He sued his employer in negligence.

In the Supreme Court of Queensland, the employer claimed that the overcrowding and the additional pressure that this put on the prison staff were matters beyond its control - they arose from social and political circumstances for the effects of which there was no budgetary allocation - and that, as a consequence, it could not be held liable. The Court pointed out that the employer had a statutory responsibility for the security and management of the prison and the safe custody and welfare of prisoners detained there (sec 14 of the Corrective Services Act 1993). In addition, an employer's duty of care included avoiding to expose its employees to unnecessary risk of injury. Much of the employee's difficulties stemmed from the failure of h s supervisor to manage- Though well meaning and well liked, the supervisor had delegated extensively and avoided making tough decisions to the point of withdrawing from problems and dealing with matters by doing nothing.

The Court considered whether a reasonable person in the employer's position in this case could have *foreseen* that its conduct involved a risk of injury to the employee or a class of persons including the employee. ***Because the employee's anxiety had been made clear to his supervisor early in 1992, the Court found that the risk of injury had been foreseeable.*** The fact that the employee had been granted stress leave proved to the employer had been aware of the risk of psychiatric harm.

On the balance of probabilities, the Court found that the work events the employee complained of were indeed the factors which led to the onset of his psychiatric condition. The Court also found that effects of the events could have been avoided in a number of ways. The supervisor should have made a better assessment of the employee's condition especially when he had asked not to be put into situations which he had found particularly stressful. Strategies should have been developed to overcome the stressors, to introduce training on how to deal with the changes and develop coping skills and improved communication. If the employer had heeded the obvious signs stressful circumstances at the workplace listened to expressed concerns about the employee's health and then implement appropriate reviews and training programs, it could have significantly reduced the risk of the employee developing his illness. The employer had been negligent in not taking those step and was also, in breach of sec 9 of the Workplace Health and Safety Act 1995

The employee's remaining disability m it likely that he would only find part-t and intermittent employment. The Co awarded him damages totalling S470, 252. *Gallagher v The Queensland Corrective Services Commission. Australian Occupational Health & Safety Law Para 53 - 412. Refer to Occupational Health & Safety para 42 - 200.*

WorkCover NSW ignores the workplace bullying of adults & psychological bullying.

"Don't kop it - stop it", pages 5 & 6, WorkCover NSW News, Issue 41. To obtain copy & get onto mail list of WorkCover News, Tel 02 9370 5000.

Just because you are the new kid doesn't mean you have to be the scapegoat of your workplace. You don't have to endure bullying, dangerous pranks or any other form of harassment that may be directed against you.

A recent case prosecuted in the Chief Industrial Magistrate's Court illustrates that pranks can be dangerous and those involved can be convicted of criminal offences.

As a farewell 'joke' on a fellow worker's last day at Inghams Enterprises, a 28 year old leading hand and a 24 year old cleaner threw a 23 year old female worker into a large washtub fitted with hot water and detergent.

When the young woman began screaming the two men helped her out and hosed her down with cold water.

She suffered first and second degrees burns requiring hospital treatment and had to be referred to a plastic surgeon.

The two workers pleaded guilty, received criminal convictions and were each fined $400. A 40 year old female, who had helped plan the prank but had not taken part, pleaded not guilty.

She was convicted and placed on a good behaviour bond under section 558 of the Crimes Act because she was found to have played an active part despite not physically participating.

These three convictions highlight that anyone who encourages or assists an unlawful act is just as responsible and liable to conviction as the persons who actually perpetrate the dangerous practical joke.

Employers can also be liable because workplace bullying and harassment is seen from the OH&S perspective as a foreseeable risk which must be managed for an employer to discharge the duty of care under the terms of the Occupational Health and Safety Act.

Prosecutions can be brought under several different statutes including: Criminal Law, Occupational Health and Safety Law, Workers Compensation Law, Anti-discrimination Law, Breach of Contract, Personal Injury Liability and Unfair Dismissal.

Supposedly harmless pranks are common, especially those involving new or young workers who are often tormented and bullied in the name of initiation.

Light hearted, consensual initiations can easily degenerate into short or long term bullying and harassment that causes considerable anguish and sometimes physical injury.

Young people often feel they have no choice but to endure because of job scarcity, workplace inexperience, hierarchical status in an organisation or lack of self-esteem.

Very little is available in the form of hard statistics but a recent airing of the subject on radio 2JJJ brought a huge response from victims who believed they were powerless to protect themselves.

"Supposedly harmless pranks are common, especially those involving new or young workers who are often tormented and bullied in the name of initiation."

In the words of a new WorkCover campaign: victims do not have to "kop W' but can "stop W' by calling the National Childrens and Youths Law Centre (NCYLC) on freecall 13 10 50 (NSW only).

Victims are being told how to "stop it" by a NCYLC program entitled "A secure workplace for young Australians", funded by a grant from WorkCover

Phase one of the program was a series of forums in Newcastle, Wollongong and Sydney. These told employers of their legal responsibilities and provided model procedures for managing the problem.

An advisory kit on workplace bullying and harassment was developed and this is available from WorkCover and the NCYLC.

In the second phase, a specific section on workplace bullying was developed and added to the NCYLC website: http://www.lawstuff.org.au.

This section informs workers of their rights and tells them of the legal avenues open to victims of workplace bullying.

Phase three is a communications campaign telling young workers that workplace bullying is unacceptable, is not to be tolerated and can be remedied by taking appropriate action.

This is being communicated by posters for general distribution to workplaces, unions and TAFE Colleges and by widely circulated drink coasters.

Key messages in the educational campaign are:

- Workplace bullying and harassment is illegal and should not be tolerated
- Victims and witnesses should speak out and not be intimidated by a code of silence or a belief that they are not at liberty to take action
- Workplace bullying and harassment is more common than the wider community realises
- What to do? Call the NCYLC helpline 13 10 50 (NSW only)

You don't have to kop workplace bullying and harassment. You can do something about it by calling the National Childrens and Youths Law Centre (NCYLC) on help line on 13 10 50 (NSW only).

Don't put up with:

- Verbal or non-verbal (gestures) abuse.
- Verbal abuse coupled with specific threats or with physical action against inanimate objects such as banging a table throwing an object or forcing a door.
- Intrusions into privacy experienced as intimidating - including unwanted communications.
- Stalking such as loitering, repeated following, unwanted contact.
- Behaviour that creates an environment of fear including intimidation, ostracism, hazing and ganging up.
- Sexual harassment - verbal innuendo, touching, non-verbal conduct.
- sexual assault.
- Physical abuse with without injury such as pushing and obstructing
- Physical abuse with minor injuries such as cuts and bruises.
- Physical assault resulting in severe injuries requiring medical or hospital treatment.

Don't kop it - stop it by phoning: 13 10 50 (NSW only). For further information: check the NCYLC website: http://www.lawstuff.org.au and follow the links to 'harassment' to find out your legal options.

Workplace bullying is not a case of fun and games.

Joe Catanzariti is a partner in the Sydney office of national law of firm Clayton Utz. Weekend Australian 15 & 16/1/00. Careers section page 1.

Workplace violence is one of those employment problems that refuse to 90 away, primarily because in some places it is still seen as a normal part of work culture.

A recent NSW case has raised the spectre of organised bullying. This behaviour is sometimes called "bastardisation". Employees are picked on, harassed and abused systematically by their seniors.

This is obviously unacceptable in an

Australian workplace, but employers have a duty to actively prevent its occurrence.

At a municipal council, an employee was subjected to several "practical-jokes". The employee worked in the parks and gardens department, and several times was tied to trees and tables, and taunted and harassed.

Two older employees regularly pulled his pants down in local parks, grabbed his genitalia and poured ice down Ins pants while he was tied up.

When driving around in the council truck, the harassed employee was in a constant state of stress from the attacks. Pieces of lit paper were thrown at the harassed employee while he sat in the truck, and once under a toilet door.

One of the three employees subsequently dismissed stated that these acts were always done in fun and there was never any intention to hurt anyone.

Clearly this behaviour is dangerous. It is violence and sexual harassment which no employee should have to tolerate, even when it is part of treatment everyone received in tile past at a particular workplace.

Several issues arise from this case. Firstly, council policies should have had stated the unacceptable nature of sexual harassment. In contrast, the harassed employee never attended any training sessions on equal Opportunity matters or workplace harassment, Nor was he given by the council any documents about these issues or about, grievance handling procedures.

One of the dismissed employees did not even know the meaning of the term "sexual harassment".

The supervision procedure also was woefully inadequate. A member of the public had to call the council to complain of the harassed employee being "pantsed" in a local park.

When the team leader became aware of the harassment she said nothing about it to her superiors because it was decided that it "would not look good for council or for her" if there was a complaint about It.

When the council finally did investigate, It was so rushed that it did not discriminate between the different bullying behaviour of the various employees. There was no effort to determine dates of the incidents, or to elicit information as to who participated in the events.

The council dismissed all three, probably hoping to deal with the matter quickly now that it had reached this unacceptable stage. The Industrial Relations Commission found that the council should have conducted a full

and extensive investigation, and provided proper instruction as to occupational health and safety.

This case holds several potential lessons for employers. Firstly, workplace policies should state that harassment of any kind is unacceptable.

A detailed anti-violence program is imperative. These policies should be freely available and employees educated in their provisions, Including training courses for employees of every level of experience. Old habits of "fun and games" can stick around without active prevention.

Secondly, when harassment does occur, there should be grievance procedures that act immediately but thoroughly to address complaints. Employees should be encouraged to bring formal complaints, and investigations should provide tile time and resources to get to the crux of a harassment complaint.

Employees should be given the chance to present their own evidence, and any action taken should be carefully considered in light of all the circumstances.

If an employer feels their human resources department cannot adequately carry out such an investigation, they should outsource the function to ensure procedural fairness. Otherwise they might face an unfair dismissal action to worsen their embarrassment.

Dobber's dilemma a double-edged sword.

Joe Catanzariti, a partner in the Sydney office of national law firm Clayton Utz, is an expert in workplace relations and-employment law. The Weekend Australian, Saturday 30 May 1998.

Honest employees who discover theft or corruption at work often face a difficult choice.

If they inform the employer or outside authorities, they risk being harassed and victimised by their workmates or even from management. If they do nothing, they feel morally uncomfortable. Too many take the soft option and ignore what Is going on, conscious that Australians traditionally take a dim view of those who "dob".

Employees who make the difficult decision to disclose such conduct have become known as whistleblowers (WBA notes that the term ‘dobber’ is an incorrect term for whistleblower - refer to W DeMaria book ‘Deadly Disclosures’. ‘Dobber’ is not a synonym for whistleblower and the use of this term is either mistaken or pejorative journalese to refer to a whistleblower. Ed.) Until relatively recently, the law offered these conscientious employees little help. For employers, the legal implications of whistleblowing are significant. Most jurisdictions in Australia have laws which offer whistleblowers some degree of protection - and some even provide for fines and Imprisonment for people who victimise whistleblowers. Depending upon the particular jurisdiction, employees in both the public and private sectors can be protected, and there is a push to extend application of these laws to cover a greater number of employees. For employers, the disclosure of corrupt conduct can be a double-edged sword. Whistleblowers can be a valuable source of Intelligence for senior management and can save the organisation

thousands of dollars. Whistleblowing can also allow management to remedy corruption internally before it causes adverse publicity that might damage the organisation's reputation or even render the employer criminally liable.

The downside of whistleblowing for the employer occurs where the whistleblowers bypass internal systems of Investigation and take their concerns directly to the media or outside authorities. To prevent such action, employers must establish systems whereby whistleblowers can put concerns to senior management confidently and without fear of retribution.

A good employment Policy may include:

- A statement by the employer that corruption or theft will not be tolerated.
- A mechanism whereby employees can meet with management, In confidence, to address their concerns.
- Swift, reasonable and effective employer action to stop the corruption.
- Protection for whistleblowers.

Several corporations actually require employees who know of corruption or theft to come forward and disclose it to management, or face disciplinary action.

While such policies are recommended, employers must be careful not to create a culture of fear or mistrust in the workplace. Managers must assure all employees that such policies do not reflect the belief that all employees are dishonest - but that they are designed to catch those few employees who stray'.

Difficulties for employers can arise if whistleblowing is abused by employees to target their enemies or to address grievances they have with their employer. This is why the legislation in most jurisdictions provides penalties for whistleblowers who make knowingly false or misleading statements.

Doubt cast on forensic psychiatrists as expert witnesses. David Brearley, Australian.

The following text is sourced from a series of articles 'Psychiatry in the dock' investigated & written by David Brearley and published in The Australian newspaper over the days 17 to 19/1/2000, plus The Australian Editorial 17/1/2000.

Forensic psychiatrists have an important place in the justice system. Their expert evidence is sought to provide a dispassionate evaluation of matters before the court. This helps to determine the psychological effects of workplace injury, for example. It is important expert opinions are balanced or their value will be in doubt.

An investigation by The Australian has shown the neutrality of expert psychiatric opinion is under question. The profession of forensic psychiatry is being undermined by a culture of partiality. This, in turn, leaves the profession open to suggestions of a cash-for-comment situation in the courtroom. The expert may feel responsible to the party paying his or her

fee; alternatively, a lawyer may go shopping for an expert who holds a particular view. These scenarios can lead to accusations of bias. A recent extreme example is the evidence of Malcolm Dent, who has admitted to being selective in his report into the mental health of solicitor John Marsden. Dr Dent's evidence was heard during Mr Marsden's defamation case against Channel Seven.

The use of forensic psychiatrists to provide expert evidence is becoming more common. Such expert evidence is expensive -costing upwards of $1000. This is increasing the cost of justice in Australia. If one party hires an expert, the other will feel compelled to do the same. These are expenses out of reach for many particularly those using Legal Aid. Use of expert evidence, therefore, may perpetuate social inequality.

Judges have expressed a strong desire to retain expert psychiatric evidence, even though the profession suffers from a reputation for being subjective, and not reliant on hard facts. This is used by those opposed to psychiatric evidence to lobby against it. Judges believe forensic psychiatry offers a range of legitimate views that deserve to be heard in a courtroom. It is not surprising that when compiling evidence a barrister will choose expert opinion that backs up his or her case. Judges become familiar with the viewpoints of particular experts and take this into account when handing down their judgements. Jurors, however, are unlikely to be able to use such discretion. Supporters of expert evidence argue it is the role of court process to uncover bias. If this does not occur, it is the skills of the legal profession, not the psychiatrist, which need reassessment.

Reform of the industry is clearly required. A code of ethics has been suggested to underline the obligation of forensic psychiatrists to the court, rather than to the legal team paying for their evidence. Psychiatrists in breach of the code should be disciplined. Of all medico-legal grievances lodged with the Health Care Complaints Commission throughout the 1990s, psychiatry featured more highly than any other medical specialty. Yet the psychiatrists' professional body has never disciplined one of its members on medico-legal matters. Greater willingness to probe complaints must be demonstrated.

Further training for lawyers is important to help them effectively question experts. Lawyers are sometimes unwilling to be tough in their cross-examinations of other professionals. In turn, there are too few forensic psychiatrists willing to undertake this work. This acts against a diversity of opinion. A more radical approach is to transfer responsibility for appointing expert witnesses to the court itself. This would tackle the potential for bias and reduce costs. Certainly, modern case management should allow judges to exert greater control over the use of forensic psychiatry. There is no straightforward answer to this problem. Fostering transparency and accountability must be the first step.

Psychiatry in the dock - Forensic tool or hired gun. Story by David Brearley, Australian.

Decency and integrity challenged as psychiatrists move from the couch and in the dock to service ‘white collar crime’ in the workplace.

Psychiatry, the subject of sustained public complaint and judicial displeasure, is under intense pressure to lift its game in the witness box.

The matter will come to a head this week when NSW Attorney-General Jeff Shaw considers a survey of medical opinion in which psychiatrists, alone among the specialties, oppose the presence of witnesses when they examine injured workers for court cases.

Such examinations may be held at the behest of employers or their insurance companies, often against the worker's wishes, and have resulted in countless complaints to official health watchdogs.

Investigations by *The* Australian reveal a frightening raft of concerns about the role psychiatry plays in our courts and tribunals.

These centre on the bullying behaviour of some psychiatrists routinely engaged in litigation, the complex financial relationship between psychiatrists and the parties who retain them, and the propensity of our adversarial legal system to engender bias in psychiatric evidence.

Ultimately, they point to a crisis of confidence in psychiatry as a forensic tool.

The Australian has learnt:

- Judges identify bias as the single most serious problem when dealing with expert evidence - and psychiatrists as the worst offenders.
- Government agencies continue to deploy notorious psychiatrists against citizens.
- Lawyers maintain detailed dossiers on psychiatrists' performance in court, and accept gifts from those they retain.
- Psychiatrists themselves worry about their role in the courts. Some regard certain of their peers as "hired guns" who take cash for comment when giving evidence. Australian Medical Association guidelines once compared employers' use of psychiatrists with Soviet persecution of dissidents.
- Self-regulation is a failure. Despite a record number of complaints to official bodies and severe criticism from the bench, the Royal Australian and New Zealand College of Psychiatry has never disciplined one of its own over medico-legal matters.

With the flawed testimony of psychiatrist Malcolm Dent in the Marsden defamation case fresh in the memory, judicial opinion will bear down on the profession this week when Mr Shaw receives a survey on medico-legal evidence.

Mr Shaw took up the issue late last year after Judge Burke in the NSW Compensation Court ruled against nurse **Bronwyn Maddison** taking a witness to her examination by Sydney psychiatrist John Roberts.

The court heard the NSW Health Care Complaints Commission had on file "a large number of complaints" about Dr Roberts, but Judge Burke said there was "no way in the world" Ms Maddison could take a "so called support person" to her examination.

The NSW work safety body WorkCover has since contacted the various professional medical bodies and found broad support for witnesses at medico-legal examinations - with one exception.

The RANZCP opposes the move, arguing witnesses may prevent disclosure of sensitive information.

But Compensation Court Chief Judge Michael Campbell, in his submission, says witnesses should be allowed "in the absence of good reason to the contrary".

Doctor says whistleblowers can be forced to see psychiatrists in order to discredit them.

Jean Lennane, a practising psychiatrist and president of Whistleblowers Australia, believes some of her peers are engaged in a particularly brutal form of cash for comment.

"In the extreme cases it amounts to really serious and damaging abuse of individual patients for money," Dr Lennane says.

"One of the worst things is that some of the hired guns do a hatchet job on people who are already very damaged and vulnerable.

"The hired guns are a minority, but they get quite a lot of the work.

"After a while the courts start saying ‘We’ve had this same report before 20 times about different people and we don't really have much time for the person who's preparing them'. But that takes time."

Writing in the British Medical Journal several years ago, Dr Lennane highlighted the issue of forced referrals.

"Forcing whistleblowers to see psychiatrists in order to discredit them, usually as having a personality disorder that could account for their irrational obsession with malpractice, is reminiscent of Soviet misuse of psychiatry," she wrote.

"If the first psychiatrist's report is unhelpful, the subject can be forced to see another until the desired result is achieved."

Respondents to Dr Lennane's survey reported a median of three referrals each. "The practice is clearly unethical," she comments. "Coercion invalidates consent."

George Mendelson, Vice-Chairman of the RANZCPS section of forensic medicine, says there are "obvious dangers" in forced referrals.

"On the other hand, I think there have been instances of people who have a mental illness claiming things to have happened that are really manifestations of the mental disorder," Dr Mendelson says.

"It's a question of whether the public interest is served by it. It's a question of balance.

"Probably the patient or his representative should have some say in who the psychiatrist is. By and large ... a psychiatrist should not undertake an evaluation against the wishes of the individual."

Yet frequently they do. The NSW Compensation Court last year forced a workers compensation claimant to see a GIO-appointed psychiatrist, unaccompanied and against her wishes - an outcome that runs counter to NSW Medical Board guidelines.

Reluctance to submit to examination, or requests to record consultations, are regularly cited in reports as evidence of paranoid personality disorder.

The psychiatric profession courts cure for ethical dilemma.

David Brearley investigates the ethical problems in using psychiatry as a forensic tool. Ethics are a murky area at best, but the waters become even muddier when two lawyers and psychiatrists collide in court.

Ethics are a thorny consideration when psychiatrists give evidence, an all the more Prickly because legal ethics and the law itself come into play.

A lawyer and a psychiatrist may have conflicting duties of care to the same client-patient.

Fellows of the Royal Australian an New Zealand College of Psychiatrist operate under a series Of guidelines which are rich in caveats and must be cross-referenced with a code of ethics and accompanying principles, all under the umbrella of their Hippocratic oath.

A preamble to those guidelines, two of which cover forensic practice, states they "may not be relevant in all the circumstances that can arise with medico-legal reports".

The threshold question of what happens when a doctor's duty of care runs counter to his forensic role - the so-called "ethical dialectic of psychiatry" is addressed only obliquely.

Other contentious issues, such as the right of a patient to have a support person or witness at forced referrals, are ignored completely.

The ethical paradigm shifts yet again with the demarcation between clinical patient and medico-legal client.

"That bond, if you like almost a therapeutic bias that a doctor must have towards his patient, should not apply in the medico-legal arena," says RANZCP president Jonathan Phillips.

"It is a more dispassionate, slightly more removed interaction. Not to say that you can't be warm and empathetic - indeed, I think you should - but it's not that you're linked with a client in any therapeutic sense."

Psychiatrist Jean Lennane says this patient-client divide is a convenience which some psychiatrists use to side step their Hippocratic oath.

"The doctor's absolute obligation," she insists, "is to do no more damage."

Dr Lennane, who is not a fellow of the college, succeeded briefly in having the NSW branch of the Australian Medical Association gazette a set of simple, stringent guidelines for psychiatrists in the medico-legal arena.

That 1993 document highlighted abiding concerns over the use of psychiatry to discredit plaintiffs.

Its preamble stated: "Insistence by the employer in referral to one or more Psychiatrists has become a common means of discrediting or getting rid of the employee, in a manner reminiscent of the Soviet use of psychiatry in dealing with political dissidents." The guidelines themselves called for "genuine consent" on the patient's part and proscribed forced referrals.

The NSW branch withdrew the guidelines after the college vigorously lobbied the AMA at federal level.

Dr Phillips says the college's position has been painstakingly considered, and believes the NSW AMA overstepped the mark in 1993.

"The decade just closed has been a monumental decade for change in medicine," Dr Phillips says. "The profession has increasingly come to understand its responsibility to the community at large. As part of this we've had to develop quality processes which withstand scrutiny and wherever possible are evidence-based. Medico-legal guidelines were an obvious area.

"I think that a state branch of the AMA, in all its wisdom, would probably not be in a good position to develop guidelines nationally for a specialty."

George Mendelson, vice-chairman o the college's section of forensic medicine, says the RANZCP's ethics and guidelines are works in progress, subject to constant revision. Asked why the college has never had occasion to discipline a fellow over medico-legal matters Dr Mendelson says: "Presumably it has never had evidence produced to its satisfaction that fellows are not behaving correctly.

"As long as the (medico-legal) opinions are in a sense sincerely and honestly held, and people don't vary their opinion or philosophy depending on who is asking for the report, I don't think the college can enforce any particular party line on its fellows."

Ian Freckelton, in his 1999 study Australian Judicial Perspectives on Expert Evidence, discovered "a culture amongst experts prepared to do forensic work that has tolerated" those who "compromise their objectivity".

Judges weigh psychiatric bias.

Among the courtroom insights to emerge from Sydney's ongoing John Marsden defamation case has been the influence wielded by a select few psychiatrists in the judicial system. David Brearley investigates the problems inherent in using psychiatry as a forensic tool. "There are medical witnesses who are little more than prostitutes", a judge

The matter that brought Malcolm Dent to court late last year was the damage done to another man's reputation. In the event, however, the highstreet psychiatrist and serial witness spent two days in the' box doing untold damage to his own.

Called by the Sydney solicitor and power networker John Marsden, Dr Dent swore his oath and furnished the NSW Supreme Court with his expert opinion: that Marsden was depressed, suicidal even, because Channel Seven had branded him a paedophile. Lest there be any

confusion as to Seven's role, Dent's report was explicit: "There is no other cause for this major depression."

But Dent had been less than truthful, and Seven's lawyers ripped him to shreds.

Before his ordeal was over, he had admitted to an astonishing string of errors, gross errors and lies.

He had been selective in preparing his report, he conceded, deleting specific passages and deliberately overlooking various other "stressors" that might have worsened Marsden's depression. Moreover, he had gone out of his way to conceal evidence that the depression predated Seven's broadcasts.

All this was done, Dent allowed, at the behest of his paymasters: Marsden's then solicitor, Phillips Fox partner Richard Potter, and ultimately Marsden himself.

Dent's future as a forensic expert is unknown. For now, he continues to testify. No complaint has been lodged, and with the Marsden matter due to resume this month, Justice David Levine is yet to comment.

The disturbing aspect to Dent's testimony is not that it took two days of dogged cross-examination to extract, nor even that the truth might have remained buried save for a freak clerical gaffe at the Bar table.

The real issue is the shadow it casts on the psychiatrists who infest our legal system.

Investigations by The Australian reveal a spate of serious and abiding *concerns about* psychiatry in our courts and tribunals. Judges are deeply troubled by the relationship between psychiatrists and the parties who engage them, and outspoken about the propensity of our adversarial legal system to engender bias in psychiatric evidence.

At a deeper level, there appears to be a widespread crisis of confidence in psychiatry as a forensic tool.

So complete was Dent's retreat in the Marsden case, and so frequent his reversals, that Seven's barrister asked at one point: "Is this the position, that you would write reports in terms you were asked to do so by those who were paying the fee?"

Dent strenuously denied this was so, and indeed, his case is atypical of the complaints most commonly levelled at his profession.

Whereas Dent is well known as a plaintiff witness, and has a reputation for deep empathy with his patients, it is the psychiatrists retained by defendants who attract the volume of complaints and draw the judges' ire.

Most work the civil case list personal injury, workers compensation and veterans claims - where a lone plaintiff is pitted against a cashed-up employer or its insurer. Observers describe a high-stakes David-and-Goliath poker game where insurers retain the most expensive psychiatrists, obliging the plaintiff to shop for matching evidence.

The most infamous judicial dressing-down came from Justice David Hunt in the NSW Supreme Court, who named Sydney psychiatrist Kenneth

Dyball among an "unholy trinity" - one of the GIO's "usual panel of doctors who think you can do a full week's work without any arms or legs".

Justice Hunt stated - and the High Court affirmed his right to express the opinion - that Dr Dyball's reports were "almost inevitably slanted in favour of the GIO".

More recently, Newcastle psychiatrist Allan White, a well-known defendant witness, has been the subject of repeated rebuke in the Administrative Appeals Tribunal.

Tribunal members have cited his "gross generalisations" and, noting his tendency to accept the employer's version of events, directly questioned his objectivity.

Late last year, in the case of Sheridan Vs Comcare, AAT senior member Mason Allen criticised Dr White for writing a medico-legal report on a man he had never met.

White is due to testify for Seven when the Marsden matter resumes later this month; the case will pit his evidence against that of his former mentor, Dent.

Judges are clearly troubled by the protracted and sophisticated relationships between the insurers, their solicitors and the psychiatrists in question.

Out of court, and under the veil of *anonymity, they* are scathing. "In (Victoria's) WorkCare (now Vic WorkCover)" notes one, "there are medical witnesses who are little more than prostitutes, *known for* their ability to express the extreme views for which they are notorious."

In a 1999 study, Australian Judicial Perspectives *on* Expert Evidence, almost 90 per cent of judges reported biased testimony, and one third identified bias as the worst problem when dealing with experts.

Survey author Ian Freckelton says psychiatrists featured promi*nently among* the many "caustic and critical" comments judges attached to their answers.

"Their concern is that when medical practitioners function solely or almost exclusively as forensic experts, there's more of a risk that their views will be tailored to suit the interests of the party calling them," Dr Freckelton says.

Several factors combine to exacerbate the problem, to the point where Justice Heery in the Federal Court has noted the High Court's "lack of reverence for accepted wisdom in medical circles."

The first is the adversarial system itself, which encourages plaintiff and defendant alike to seek the most persuasive evidence, but not always the most authoritative. As barrister Peter **Gaughwin** wrote in the Australian and New Zealand Journal of Psychiatry: "The adversarial system is about winning the case, rather than necessarily finding the truth."

Australian case law also lacks a definitive ruling on expert evidence, while at statute level judges regard the Commonwealth and NSW Evidence Acts (1995) as having extremely limited effect.

Finally, Australian and forensic psychiatrists appear to exist in an ethical whirlpool that has failed to quarantine them from judicial attack - or to provide a disciplinary framework. Self-regulation is clearly ineffective.

The Australian has spoken to a number of people who have suffered disturbing forced encounters with psychiatrists. They tell of questionable techniques, coarse language and common bullying.

One particularly infamous practitioner, a Sydney psychiatrist well loved by defendants, is known for his skill in shaking patients' confidence: he arrives late without explanation or apology; eats throughout consultations, often with his feet on the desk; stands behind patients and drops telephone directories on the floor.

RANZCP president Jonathan Phillips says he is "horrified" by such reports. "I don't approve of any technique used to create anxiety or excite or distress in the patient," he says. "It is totally without benefit and it could be contrary to obtaining a satisfactory report."

In lieu of any evidence that self-regulation is working, the courts themselves are beginning to take action.

The Federal Court has been the most assertive in this regard, issuing a 1998 Practice Note that warns expert witnesses against becoming an advocate for the retaining party, and demands disclosure of all instructions, written or oral.

Freckelton, who has explored the collective judicial consciousness on this subject more deeply than any other scholar, believes the Federal Court initiative will encourage other jurisdictions to follow suit.

He also expects judges will become more active in the trial process - possibly by appointing their own experts - in their efforts to forge a "culture of obligation" between experts and the courts.

Ultimately, Freckelton says, the solution may be buried in the appeal papers. He expects a test case expert evidence - probably a criminal matter with a scientific aspect - to reach the High Court within the next few years.

With legal aid drying up and the cost of expert evidence mushrooming, he says, judges are becoming more circumspect in their dealings with psychiatrists.

"They think it's a soft science," Freckelton contends, noting that the Diagnostic and Statistical Manual on which most psychiatric evidence is based contains strict caveats against its use in court. "Psychiatry is generically different from traditional science, where scientific principles apply in a more rigorous fashion".

Psychiatrists are pretty keen to have latitude in terms of diagnosis.

"It's a matter of clinical impression and clinical judgement based upon experience".

There's just no way around the fact that psychiatry is regarded as an art rather than as a science by its own practitioners."

The profession itself, which has more than a few skeletons in its cupboard, and continues to enjoy a lucrative ride on the litigation band wagon, is disinclined to agree.

‘HealthQuested’, sacked or psyched out?

David Brearley investigates ‘HealthQuesting’ in the pursuit of psychiatry in the dock. Psychiatry can serve conflicting purposes both in the workplace and in court.

The NSW Director General of Health has called in an independent consultant to investigate HealthQuest, the medical examiner for all state public servants, over concerns that employers are verballing workers to achieve forced medical retirements.

The move follows a referral from the Health Care Complaints Commission, which many of which concern its psychiatric assessments.

Workers can be sent to HealthQuest at the employer's discretion, and some have been retired on medical grounds following assessment by HealthQuest psychiatrists.

The consultant will review HealthQuest's operations with specific reference to its reliance on employers' verbal reports and perceived lack of transparency.

The inquiry will also address the lack of information provided to workers sent for assessment, including insufficient information about appeals and the consequences of non-compliance with HealthQuest orders.

A Commission document, seen by The Australian, states: "Basing assessments on employer-written reports was considered inappropriate.

"Concerns were also raised about the practice of accepting written summaries prepared by employers rather than obtaining reports and statements containing first hand observations.

"The use of verbal information provided by employers without confirmation in writing was considered unsafe."

Other grievances about the brevity of HealthQuest's assessment interviews and the appeals mechanisms will be investigated.

The commission, in referring the complaints to the Director-General of Health, also refers to HealthQuest's "onerous practice" of expecting patients to pay for the reports.

A spokeswoman for NSW Health Minister Craig Knowles said last night that many of the complaints came from workers who had gained access to their HealthQuest files under freedom of information laws and disagreed with the medical assessments.

Workers who disagree with HealthQuest's assessments can take their case to the Medical Appeals Panel, whose practices were "not considered transparent and fair", according to the Commission document.

Workers who have been medically retired after psychiatric assessments by HealthQuest have been reinstated on appeal to the Industrial Relations Commission.

Public Interest Advocacy Se**rvice report says "case studies indicate a** fundamental lack of natural justice in the process of 'HealthQuesting' an employee".

The lyrics are different but the same melody lingers on and on ……

Legal opposites of forensic psychiatry under the same cloud. David Brearley investigates the market for innovation and entrepreneurialism in the pursuit of psychiatry in the dock.

Allan White, a psychiatrist with rooms in Newcastle and Sydney, typically testifies for the federal Government against injured workers and war veterans.

Next month, however, he is due to testify for Channel Seven against John Marsden's damages action - a case that will pit his evidence against that of his former mentor. Malcolm Dent, whose testimony for Mr Marsden proved so controversial late last year.

Each psychiatrist has a substantial legal element to his practice but, philosophically, they are polar opposites: Dr Dent is a classic plaintiff witness: Dr White identifies with defendants.

If the Marsden case has afforded Dr Dent a certain unwanted notoriety, it would be equally fair to say Dr White brings a reputation of his own to the proceedings.

His forensic work has been the subject of repeated rebuke in the Administrative Appeals Tribunal, where his, objectivity has been directly questioned.

Tribunal senior members M.T. Lewis and P.D. Lynch characterised Dr White's evidence in Cavalieros v. Comcare (1998) as "based on principles which the tribunal finds to be misguided".

They criticised his "gross generalisations" about competing expert evidence and found his acceptance of the employer's version of events had led him to make assumptions "inconsistent with the tribunal's findings".

Mrs Lewis made a similar point in Wicks v. Telstra (1997), where she noted Dr White had "based his opinion on the reasonability of the employer's actions".

Mrs Lewis was also critical of Dr White's methodology: "He said that the combination of the applicant's developmental history together with his behaviour at work was sufficient to generate the hypothesis in respect of long-term Personality dysfunction, even though, he did not seek or obtain a history of vulnerability during child hood or adolescence."

Concluding her summary in Wicks. Mrs Lewis remarked: "The tribunal questions the objectivity of Dr White."

"As Dr White did not examine the applicant, it is difficult to see what validity his report can have."
M.D. *Allen,* Administrative Appeals Tribunal

Perhaps the most unusual admonition Dr White has received concerns what AAT senior member Mr Allen called his "speculations" in Sheridan v. Comcare (1999). The applicant in that case, Bill Sheridan, missed his appointment with Dr White after being given the wrong address for the psychiatrist's Macquarie Street rooms in Sydney.

Mr Allen wrote in his decision last month that "on the material made available to him, he prepared a report as to the applicant's psychiatric condition. " As Dr White did not examine the applicant, it is difficult to see what n validity his report can have."

A Comcare spokeswoman told *The* Australian the federal body was aware of the AAT's criticisms and had not called upon Dr White's services for some time.

The Marsden case is not the first occasion Dr Dent and Dr White have found themselves on opposite sides of a legal argument, but focusing as it does upon the mental state of a high profile citizen, it makes for a telling study of the role psychiatry plays in our courts and tribunals.

Mr Marsden, the well-connected Sydney solicitor, is seeking damages from Seven, which defamed him by alleging he slept with boys.

Dr Dent and Dr White have both examined Mr Marsden.

Dr Dent found a broken man and in his initial evidence at least, sheeted the blame home entirely to Seven.

Dr White's view is yet to be expressed. He is overseas and unavailable for comment.

Psychiatry can serve conflicting purposes both in the workplace and in court.

Psychiatry can serve conflicting purposes both in the workplace and in court. David Brearley investigates the economic aspect ('cash-for comment') in the pursuit of psychiatry in the dock.

Monte Durham's 1954 conviction for housebreaking was overturned when the US Court of Appeals found his crime to be "the product of a mental disease or defect", prompting Abe **Fortas**, later a Supreme Court justice, to cast the case as "an offer of limited partnership between criminal law and psychiatry".

Psychiatrists have embraced the offer, bringing a positively entrepreneurial flavour to the expert evidence market, particularly in the US, but increasingly in Australia.

Ever more confident in their diagnoses, and ever more cosy in their relations with the legal profession, they have widened the ambit of their legal work throughout the criminal and civil jurisdictions.

Australian lawyers well understand the new dynamic. While openly critical of psychiatric witnesses, they nonetheless look to carefully selected members of the specialty as a matter of course when drafting claims or defending writs.

A personal injury lawyer explains the routine: "Someone comes to me after an accident with orthopaedic injuries.

'It's a marketplace and the best psychiatrists command the most money.' Dr Ian Freckelton. Dr Freckelton's completed the study Australian Judicial Perspectives on Expert Evidence, 1999.

"I might say, 'Are you having nightmares?' If they say no, I'd say, 'Are you having problems having sex with your partner?' Yes, they are. Why? They're too stressed.

"It might not be related to the original incident, but that's for the doctor to decide. I'd want my client to see a psych."

"It's a classic lawyer line," a colleague agrees. "You say, 'Look, I'm not a doctor, but to me there seems to be some sort of mental problem, either now or down the track, and you should cheek that out.

"All lawyers know nervous shock claims are on the rise. It's an American thing that's moving to Australia."

Lawyers in big city firms keep detailed dossiers on all their expert witnesses and dedicate regular meetings to assessing their courtroom performance.

With Psychiatrists, they look for a diagnosis that is favourable to the client and acceptable to the judge. Ideally, the Psychiatrist must be fresh - judges grow suspicious of serial witnesses - and cool in the face of rigorous cross-examination.

"My firm had a list of doctors," says a lawyer retained by an insurance company. "It was extensive, a 30-page document, split into specialties, probably 100 names. If a doctor was really good, we gave them four stars on the list."

Psychiatrists advertise their services in law journals and, employing a marketing tactic they have learnt from the drug companies, bombard potential legal clients with trinkets: caps, T-shirts, stationery and the like.

They are handsomely rewarded for their evidence - better than any other expert witness - and guard their forensic referrals jealously.

One lawyer tells of receiving a horse in a Melbourne Cup sweep, via fax, from a psychiatrist he had recently engaged; another knows a doctor who sends a bottle of scotch to every solicitor who retains him -and a bottle of champagne to their secretaries.

"Some psychiatrists acquire a certain celebrity in the courts" Dr Ian Freckelton, Melbourne. " Dr Freckelton is the author of 'The Trial of the Expert. A study of expert evidence and forensic experts', 1987, Melbourne, Oxford University Press.

Scholar Ian Freckelton, perhaps the nation's leading authority on the medico-legal nexus, identifies a common phenomenon of doctors in the twilight of their clinical careers shifting into forensic medicine.

Psychiatrists entering the medico-legal arena quickly gain a reputation as plaintiff or defendant-friendly. Some go on to acquire a certain celebrity in the courts.

"A doctor will initially be approached by one side or another and do a good job," Dr Freckelton, says.

"He would then be viewed as having something of an ideal inclination towards being sceptical or being generous spirited. Sooner or later, the inclination will manifest itself then other firms will use him."

The money tends to be higher on the defendant side of any case, where the retaining party is likely to be an employer or the employer's insurer.

"It's a marketplace and the best psychiatrists command the most money," Dr Freckelton says. "You can have anything from a legal aid report, which costs $400, to one that costs several thousand. Costs mount and they reach four figures very quickly."

Lawyers say $800 will buy only an average psychiatric report these days. A decent report costs $1200, and more again for supporting testimony. "For a doctor to get on the panel of the GIO experts is goldmine," says one. "GIO, AMP - they'd all have the same list of psychiatrists."

Suspicion that a small number of psychiatrists have cornered the medico-legal mark is well founded.

The NSW Government work safety body, WorkCover in 1994 warned all its license insurers that too few doctors were performing too many medico-legal examinations.

Administrative Appeals Tribunal members more recently have repeatedly criticised the federal Government's insure Comcare, for its narrow rang of psychiatrists. (Comcare confirmed to The Australian that it keeps an "informal list" of favoured psychiatrists.)

Dr Freckelton's 1999 study Australian Judicial Perspectives on Expert Evidence found 72 per cent of judges encountered the same expert witnesses on regular basis.

Many judges were highly critical of the apparently shallow pool of expertise.

Royal Australian and New Zealand College of Psychiatry president Jonathan Phillips considers medico-legal reporting the most taxing intellectual exercise a psychiatrist can perform.

"It's best to have a balance Practice and not just prepare reports for insurance companies or for plaintiffs," Dr Philips says.

"I think a good number of us would try very hard to d mixed reporting. From the point of view of the bench, a doctor who does mixed reporting would be less likely to be moved into the area of bias."

But judges and lawyers say psychiatrists almost always fall into the plaintiff or defendant camp. "There's no much AC/DC," one lawyer says.

Quantifying the precise size of the medico-legal pie psychiatrists consume is a fraught exercise.

A 1992 report on the cost of civil litigation found expert evidence placed a serious financial burden on litigants - 16 per cent of all legal costs in the County Court of Victoria, rising to 27 per cent in pre-trial settlements - but did not break the figures down by profession.

The number of psychiatric reports actually served in court is misleading, because the vast bulk go towards settlements.

In those cases that do reach court, doctor-shopping is a common phenomenon and only a fraction of solicited reports might be tabled.

Lawyers note that once a psychiatric report is served, another usually is sought in reply. "If you're served a report that says Post-Traumatic Stress Disorder, you automatically get a report to answer it, because another psych might find it's not PTSD at all," says one lawyer.

"Whereas if you get an ortho's report, it's black and white: 30 per cent incapacitation or whatever. Quite often you wouldn't even get a report in reply."

This observation, highlighting the divide between the so-called hard and soft sciences, cuts to the heart of psychiatry's success in jumping on to the litigation bandwagon.

The price of evidence is high enough to militate against courts appointing their own experts. Judges in the Freckelton survey repeatedly raised the issue of cost in this context.

Solicitors too are unimpressed. Janet Simpson, in a submission to the NSW Standing Committee on Law and Justice, described the price of medico-legal reports as "obscene".

Another submission to the same committee came from Marsdens The Attorneys, which - in a rather neat irony, given Dr Malcolm Dent's flawed testimony for John Marsden - described the cost of medico-legal reports as "ludicrous".

The Whistle endorses "good practice" policy statements by employers.

ROYAL NORTH SHORE HOSPITAL AND COMMUNITY HEALTH SERVICES

1.3 OCCUPATIONAL HEALTH AND SAFETY POLICY (OHSRMan 4/98).

The Royal North Shore Hospital and Community Health Service is committed to a policy of establishing, maintaining and promoting safe working conditions for all employees through continuous attention to all aspects of health, safety and well-being at work.

The Executive Director will ensure the Hospital has an organisational structure to put the policy into effect and that all staff have access to professional advice on matters affecting health, safety and the working environment.

All Managers and Supervisors are required to provide safe systems of work for those employees in their control and make these measures known to them; to educate Employees and to ensure that patients, visitors and contractors are aware of the Occupational Health and Safety Policy and procedures.

All employees have a personal duty of care for the health and safety of themselves and others who may be affected by their acts and omissions; to observe the relevant rules, procedures and methods to use the protective clothing and equipment provided and to report all accidents and unsafe conditions.

The statutory requirements are recognised as the minimum levels for safe operations and the organisation undertakes to put into place policies and procedures that comply with these requirements.

Professor Norbert Berend,

Executive Director RNSH.

ROYAL NORTH SHORE HOSPITAL & COMMUNITY HEALTH SERVICES: EQUAL EMPLOYMENT OPPORTUNITY.

At Royal North Shore and Community Health Services & CHS), we are committed to ensuring a workplace free of discrimination and harassment.

RNSH & CHS will endeavour to ensure that in the application of all policies, practices and procedures, no discrimination takes place and that all employees enjoy equal access to opportunities. The basis of recruitment is the individual merit of employees.

RNSH & CHS will endeavour to ensure that no sexual, racial or other harassment takes place in the workplace.

RNSH & CHS is committed to achieving the following EEO objectives:

- to ensure that all employees are treated fairly
- to offer training and development opportunities to all
- to keep policies and procedures consistent with EEO principles
- to augment employee morale and motivation by increasing staff confidence in the fairness of our human resource practices and access to employment opportunities
- to ensure achievement of our objectives through our EEC program which includes the training of all staff on EEO and related issues

The responsibility for implementing EEO at RNSH & CHS lies with every manager. However, the Human Resources Manager is responsible

for:

- Ensuring that the Equal Employment Opportunity Policy is implemented
- Overseeing the content and direction of our EEO programs
- Training staff on EEO and related issues
- Keeping the senior management group up-to-date with legislative changes and requirements at all times
- Investigating the needs of staff in order to assist them in balancing work and family life.

The Human Resources Strategic Planning Committee consists of staff representatives, a representative of the unions and the Human Resources Manager. The Committee has the following functions in relation to EEO:

- To consult with staff on EEO and Affirmative Action matters
- To review current policies and practices in the light of EEC principles
- To assist the Area EEO Co-ordinator in preparing any annual reports to the Office of the Director of Equal Opportunity in Public Employment (O.D.E.O.P.E.), Northern Sydney Area Health Service or the Department of Health
- To participate in the training of staff on EEO issues

Employees are expected to comply with organisational policy and refrain from engaging in any discriminatory or harassing behaviour. Discrimination and harassment will not be tolerated at RNSH & CHS, Where instances of discrimination or harassment occur, they will be investigated in a confidential manner.

RNSH & CHS has in place a **Grievance Resolution Policy** which details the action employees can take if they feel they have been discriminated against or harassed. This policy contains the names of contact officers and complaint officers whom employees can speak to about making a complaint, if they so wish. The policy also sets out the procedures if a complaint of discrimination or harassment is made against you.

For further information about EEO, workplace harassment or related issues, please contact the Human Resources Department, Royal North Shore Hospital & Community Health Services on (02) 9926 7265.

(Signed) **Human Resources Manager**

Please forward examples of "good practice" policy statements by employers for inclusion in future issues of ***The Whistle***. We also seek to expose policy statements riddled with 'weasel words' and excessive 'legal babble'. This style of statement indicates that the policy/procedure will **NOT** have any practical impact to promote good corporate governance, and exists purely as a show of 'paper compliance'. Whistleblowers should seek out:

- 'guarantees of service' (which generally provide maximum times on the turn-around time for correspondence) and
- 'codes of conduct'. Codes can have legal effect. ICAC indicates that breaches of a Code can provide the early warning signs to the CEO that their organisation is heading toward improper practices and/or illegality.

- FOI procedures, OHS policies and procedures, grievance procedures, etc. are also worth careful study by whistleblowers, and should be collected prior to entering litigation or having one's employment terminated (forced VR or dismissal).
-

Forward material for publication or exposure to: The Editor, *The Whistle*, 7-A Campbell St, Balmain 2041.

Minutes of the WBA Annual General Meeting, 27th November 1999.

The WBA Annual General Meeting held on the 27th November 1999, at 1 p.m. at the River Room, Emmanuel College, University of Queensland.

Present Brian Martin, Jeanne Lennane, Feliks Perera, Cynthia Kardell, Greg McMahon, Gordon Harris, Jim Leggette, Michael Wynne, Martin Wynne, Ross McCorqudale, Bob Taylor, Tom Round, Noel Turner, Bill De Maria.

Brian Martin chaired the meeting, and welcomed all the members and visitors.

The following members were represented by proxy: Christina Schwerin, George Michalik, Lesley Killen, Rachael Westwood.

The Chairman circulated *the Secretary's Report, which was accepted* by the meeting. The Treasurer tabled the Annual Accounts, and explained the excess of expenditure over income for the year, and other transactions undertaken by the Association. Bob Taylor expressed the need to boost the membership numbers in the coming year.

The following nominations for Office bearers were tabled:

President	Jeanne Lennane
Vice President	Christina Schwerin
National Secretary	Rachael Westwood
National Treasurer	Feliks Perera
National Director	Greg McMahon
Public Officer	Vince Neary
National Committee	Brian Martin, Robert Taylor, Graham Wilson

The Chairman thanked all the Office Bearers of the last financial, year for their contribution in running the Association.

The Chairman advised the meeting, that the quorum necessary for the Annual General Meeting under 'the Constitution was 10 members physically present. As the number of members present were only 8, the meeting had to be adjourned to another date and venue

The Chairman announced that the adjourned meeting will take place on Saturday 4th December 1999, at the Castle Gardens Community Centre, in Shepparton Road, Adelaide,

A motion from Richard Blake on Membership was tabled at the meeting by Bob Taylor. The motion was rejected by the Chairman, as sufficient notice of the motion had **not been** given to the membership.

Reports of activities.

Greg McMahon tabled a flyer that the Queensland Whistleblower Group had designed, to give publicity to the most important Whistleblower cases currently awaiting resolution. The flyer has yet to be finalised for final printing and circulation, When printed, it will be distributed to all the members of the Queensland Parliament, as part of an on going awareness campaign.

Jeanne Lennane tabled a copy of a Report from the Victorian Group. The Group still meets when possible, and hopes to continue to offer support to those who attend the meetings. There was no specific activity undertaken by the Group 'in the last financial year.

Cynthia Kardell spoke in detail on the activities undertaken by the New South Wales Branch. In addition to the regular share and care meetings, new programs will be undertaken such as a forum on the problems arising from NSW Building Industry forced retirements through the Health Quest investigations etc. Jeanne Lennane gave details of her involvement with the various government and semi-government committees, to seek better treatment for whistleblowers. She also spoke on the findings and research of the various Ethic committees currently studying this issue of whistleblower protection.

Jim Leggette spoke on the activities undertaken by the Queensland group in trying to resolve some of the prominent Whistleblower cases in Queensland, and also to establish whistleblower status under the current system of Law.

The Chairman proposed a vote of thanks for all the hard work and organisation put in by the Queensland group to make the Annual General meeting a success. The Meeting was adjourned at 3 p.m. to accommodate the book launch.

Forthcoming issues of *The Whistle* will focus on ……

The editor is particularly keen to receive:

- articles for publication;
- feedback on past & the present issues, particularly on the quality and diversity of articles included. We seek your suggestions and seek to improve ***The Whistle*** for readers and to reflect the interests whistleblowers.
- useful web sites (whistleblowing, legal, ethics, dissent, government policies and procedures, etc.)

Whistleblowers Australia Inc. Regional Contact points.

New South Wales: "Caring & Sharing" meetings, we listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night 7:30 p.m., Presbyterian Church Hall 7-A Campbell St., Balmain 2041. **General meetings** held in the Church Hall on the first Sunday in the month commencing at 1:30 p.m. (or come at 12 noon for lunch and discussion. The NSW **AGM** is held at 1:30 pm on the day of the July General Meeting. **Contacts:** Cynthia Kardell, Tel./Fax. 02 9484 6895, or messages Tel. 02 9810 9468; Fax 02 9555 6268. **Goulburn:** Rob Cumming, Tel. 0428 483 155.

Wollongong: Brian Martin, National Office, Whistleblowers Australia Inc., PO box U129, Wollongong University NSW 2500. Tel.: 02 4221 3763. Web site: http://www.uow.edu.au/arts/sts/bmartin/dissent/

Queensland Contacts: Feliks Perera, National Treasurer, 1/31 Jarnahill Drive, Mt. Coolum Qld 4573. Tel./Fax. 07 5471 7659. Also Whistleblowers Action Group contact: Greg McMahon, Tel. 07 3378 7232 (a/h).

South Australian Contacts: Jack King, Tel. 08 8278 7853; John Pezy Tel. 08 8337 8912.

Victorian Contacts: Anthony Quinn 03 9741 7044 or 0417 360 301; Christina Schwerin 03 5144 3007 (Absent to 1/4/00).

Western Australian Contacts: Avon Lovell, Tel. 08 9242 3999 (b/h).

President Whistleblowers Australia Inc.: Dr Jean Lennane, c/- WBA, 7-A Campbell St., Balmain NSW 2041. Messages Tel. 02 9810 9468; Fax 02 9555 6268.

Editor of *The Whistle*: Robert Taylor, c/- WBA, 7-A Campbell St., Balmain NSW 2041. Tel./Fax: 02 9804 8857.

Support Whistleblowers Australia Inc.

Membership of WBA involves an annual fee of $25.00. Membership includes the annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/discussion groups, plus input into policy & submissions. (Anonymous membership is available on request). A concessional membership of $12.00 pa (excludes '*The Whistle*') is available to persons on low-incomes.

If you want to subscribe to '*The Whistle*' but not join WBA, then the annual subscription fee is $25.00.

The activities of Whistleblowers Australia Inc. depend entirely on voluntary work by members and supporters. We value the ideas, time, expertise and involvement of our members and supporters.

Whistleblowers Australia Inc. is funded entirely from membership fees, donations and bequests.