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

The Whistle

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Newsletter of Whistleblowers Australia

Simon Illingworth: see page 8

Media watch

Lucky country comes last

Matthew Moore
Sydney Morning Herald News Blog,
21 October 2006

Hardly a week passes when there's not another reason to get depressed about the failure of Australia's freedom-of-information laws.

Last month's High Court decision blocking access to four-year-old documents on bracket creep in the tax system and the rorts in the first home buyers' scheme was the most spectacular example.

Then there was the speech by the NSW Crown Solicitor, Ian Knight, reported here last week, in which he gave a candid and depressingly authoritarian view on why the Parliament, the press and the public should be stopped from getting government information.

Now a student in Western Australia has done a doctoral thesis comparing the operation of such laws in five countries, including Australia.

Johan Lidberg from Murdoch University used methodology similar to that used by Transparency International to produce its annual rankings of the most corrupt countries. He did surveys and ran parallel freedom-of-information applications in five countries; Australia, the US and Sweden, which have long-established freedom-of-information regimes, and South Africa and Thailand, which don't.

There was little joy outside Sweden. The US has become far more secretive since September 11, 2001, thanks largely, to the memo from its then attorney-general, John Ashcroft, which was added to the act and tells bureaucrats they can get legal help to be more restrictive in releasing information. Lidberg says that for a freedom-of-information law to work, there has to be a government culture that supports it, because that culture determines how it is interpreted, regardless of what the law says.

So Lidberg surveyed almost 70 ministers and top bureaucrats in the countries to find out about their attitudes to the information they hold.

Only five Australian bureaucrats or ministers replied, the lowest number in the survey. Of those, only one ticked the box that said "government holds information on behalf of the people and I should endeavour to deliver the information requested as soon as possible".

The other four all said, "the government owns the information." Contrast that with Sweden where all but three of 20 who replied said government holds information on behalf of the people. Little wonder Lidberg concluded Australia was the worst in the study. "It scored the lowest and its top public servants and politicians are trying hard to project an image of a mature, functioning FoI system. This is false …"

Few applicants who have used the law for other than personal requests would disagree.

Matthew Moore is the Herald's freedom-of-information editor. Contact him at foi@smh.com.au if you have been frustrated getting documents under FoI laws. Check out developments at www.smh.com.au/foi.

Long wait for a small win

Matthew Moore
Sydney Morning Herald News Blog,
20 December 2006

AT THE end of February 1997, the then NSW Treasurer, Michael Egan, declared Vincent Neary was right; the State Rail Authority had been systematically hiding more than $1 billion in losses.

Egan didn't mention Neary by name, he just issued a press release stating he'd discovered that over 20 years the authority had borrowed $1 billion to fix its crumbling infrastructure but had used the money to prop up loss-making passenger services.

That was exactly the claim Neary, a former State Rail signals engineer, had been making since 1989 when he told his then chief executive, Ross Sayers, that money meant for signalling had been siphoned off to hide losses on the passenger trains.

Neary is one of those obsessive whistleblowers who won't be brushed off and who won't modify their complaints to make life easier for their superiors.

When Sayers found there was no problem, Neary complained to the premier of the day, Nick Greiner, who flicked the allegations on to his transport minister, Bruce Baird.

When Baird agreed there was no problem Neary went to the Independent Commission Against Corruption, to the Ombudsman, to the Auditor-General. He even became a board member of Whistleblowers Australia.

Finally, he forced an inquiry into signalling, but his activities brought his career to a premature end. Infuriated, he set about trying to prove he was right by getting documentary proof using the Freedom of Information Act. He made more than 80 separate applications, which were resisted by a platoon of high-priced lawyers.

When Egan issued his statement, Neary pounced. He submitted more freedom-of-information applications asking his office and the Treasury for all the documents used to prepare the press statement.

Egan and the Treasury handed some over but withheld 10 on the grounds they were cabinet-in-confidence. The public was allowed to know State Rail was fiddling the books but it was not allowed to know why or how it had been doing it because the government said it was a matter for cabinet.

As usual, Neary appealed and ended up in the NSW Administrative Decisions Tribunal before its president, Judge Kevin O'Connor, who found against him.

Neary's case was that even though the documents were ruled exempt because they were protected by cabinet confidentiality provisions, the tribunal ADT had the power to order their release where there was an overriding public interest. O'Connor found he did not have that power and the documents stayed secret.

Ever since, that decision of O'Connor's has been cited by numerous government agencies when they reject freedom-of-information requests. If a government says material sought is exempt, then it's exempt, regardless of the public interest.

In a rare freedom-of-information victory, that changed on December 8 when the Supreme Court overturned O'Connor's decision. It upheld an appeal brought by Gerard Michael McGuirk and ruled the Administrative Decisions Tribunal (ADT) can order that access be given to exempt documents if it decides that's the preferable thing to do, based on the material before it.

According to a freedom-of-information expert, Peter Timmins, this decision may now see an easing of the NSW FoI Act.

"Any FoI applicant is now in a position to make submissions in future ADT cases that an otherwise exempt document should, in the circumstances, be disclosed," Mr Timmins said.

"This could include instances where exempt matter could be innocuous, is already in the public domain or where strong public interests justify disclosure, for example, of a document that could be claimed exempt on legal professional privilege, or similar grounds."

Neary reckons the release of Egan's documents were very much in the public interest. After all, they related to the safety standards of the NSW rail network, used by hundreds of thousands of people every year. Had the material been made public when he sought it, the signal failure that led to the train smash that killed seven people at Glenbrook in 1999 might never have happened, he says.

At 69, Neary has long since given up his fight, but the Supreme Court decision might bring him back into the fray one last time to prove he was right all along.

"I welcome that Supreme Court decision," he said. "I may just take my case back to the ADT and get those documents."

Vince Neary is the Public Officer of Whistleblowers Australia.

The whistle blown on lies that lead to war

Errol Simper ("A certain scribe")
The Australian,
23 November 2006, p. 18

THE best source any journalist may ever have is a dedicated whistleblower. We're not talking here about an embittered former employee or casual mischief-maker. We're talking about serious people, conscience-stricken insiders who've formed an unequivocal view it's in the broad public interest for certain happenings to become public knowledge.

The scribe, for example, owes a fair bit to certain ABC people who probably risked their jobs in assisting him as he dug around into the corporation's early 1990s habit of accepting illegal, indirect, backdoor sponsorship for certain programming. Insiders helped because it seemed to them the only way of stopping what was occurring. Let's hope similar sentiments would prevail should such a cancer again come to invade everyone's commercial-free national broadcaster.

Anyway, with all that in mind, it's been fascinating to watch two Australian television interviews in recent weeks with the man who — probably with justification — frequently has been described as the world's loudest whistleblower, Daniel Ellsberg. Tony Jones interviewed Ellsberg for the ABC's *Lateline* in October, while David Brill spoke with him for an SBS *Dateline* edition screened on November 8. Both segments may have resonated most, perhaps, with older viewers. Because without a brief history lesson and a bit of context the enormous significance of Ellsberg's whistleblowing activities could be lost.

To fully appreciate an interview with Ellsberg, you probably have to know he's someone who'll go to the grave in the full knowledge that he changed the world. Whether he should have done it will come down to individual convictions. To give some idea of the magnitude and polarising nature of Ellsberg's leaks, he once faced a potential jail sentence of 115 years. His wife, Patricia, told Brill: "When we came back from the [Ellsberg] trial my dad took me out to lunch. And then he said: 'That bum [Ellsberg] should have gone to jail'."

To sketch Ellsberg's background and claims to fame would require triple the space available. So we must cut a few corners. Ellsberg, 75, is the former US marine and military analyst who, in 1971, chose to leak the explosive Pentagon Papers to *The New York Times*'s Neil Sheehan.

The 7000 pages contained politically damaging revelations about the Vietnam War, and to say Richard Nixon's administration was displeased at the leak may be a vast understatement. When Nixon tried to stop the *Times* from publishing, Ellsberg leaked the documents to several other publications, ensuring the administration would be mired in endless litigation should it persist with non-publication injunctions.

It all led, indirectly, to the Watergate scandal which, in August 1974, brought Nixon down. Nixon aides, including Gordon Liddy and Howard Hunt, retaliated by searching out material via which to discredit Ellsberg. Members of Nixon's infamous Special Operations Unit broke into the office of a Washington psychiatrist, one Lewis Fielding, the latter having once treated Ellsberg. The intruders couldn't find Ellsberg's file but a pattern for illegal, politically motivated burglaries had been formulated. It was the White House's clumsy cover-up of a 1972 break-in at the Democratic Party headquarters in the Watergate building that planted the seeds for Nixon's demise.

Now, 35 years later, Ellsberg has been warning of close parallels between Iraq and Vietnam. To paraphrase, Ellsberg has called the Iraq invasion stupid, illegal and justified by a premise constructed from blatant lies.

Jones: "Do you really believe the war in Iraq was based on lies?"

Ellsberg: "No question, no matter how much misunderstanding there was about the role of the presence of weapons of mass destruction in Iraq. The [senior] administration figures, all of them — [George] Bush, [Richard] Cheney, [Donald] Rumsfeld [since resigned] — said: `We have no doubt, our intelligence agrees, we know for a fact.' All those things were lies. The evidence they had, which was misleading at best, was extremely thin

by any standards. The administration managed to conceal from the public for years the amount of controversy there was about the aims of the project, how much it would cost, how long it would take. All those things were concealed from the public and lied about, just as happened with Vietnam ... Iraq was a wrongful war."

Jones: "Do you not trust, in the end, the common sense of your President?"

Ellsberg: "I wish I could say yes ... [But] I would say if there [had then been] an [effective] opposition party in the [US] House [of Representatives], in the Senate, he [Bush] has richly earned impeachment."

The scribe has said this before, but it may be worth repeating. The real Iraq story still hasn't quite been told. And it relates to exactly why Iraq was invaded in the first place. Iraq had absolutely nothing to do with 9/11. When the former security adviser to the White House, Richard Clarke, was told the US would move into Iraq, he said it was akin to invading Mexico in retaliation for Japan having bombed Pearl Harbor.

So why did it happen? Tony Blair appeared to concede recently the invasion had been "a disaster" while other observers and protagonists have lately taken to calling it "a mistake." Close to 3000 US military personnel have lost their lives. Many thousands more are maimed for life. Unknown thousands of Iraqi civilians, some say more than 600,000, have died. That's quite some mistake.

Former NSW premier Bob Carr said on *Lateline* the other night he fears — fears shared by Ellsberg — that far from disengaging with the Middle East the US is seriously contemplating a strike against Iran. The scribe has a hunch Ellsberg and Carr are wrong. But you shouldn't put too much faith in that. The scribe never really believed the Bush administration would invade Iraq. He thought it was mere sabre-rattling. So much for sabres.

Call for a safety valve

Queensland whistleblower laws do not provide protection, writes **Guy Dehn**

The Courier-Mail,
13 November 2006, p. 27

WHAT is the difference between a pressure cooker with a safety valve, and one without?

The answer is obvious. One with no valve will explode, doing real damage, usually at the most inconvenient time.

Worldwide there is a growing recognition that there are times when it is right and necessary that whistleblowers should be able to go public with their concerns, acting as a safety valve for organisations or governments with serious internal problems.

In Queensland, reflecting this trend, the State Parliament is considering proposals to amend the Whistleblowers Protection Act — and, just like moves elsewhere, these have been triggered by a local scandal.

The trigger here was the Bundaberg Hospital inquiry, which highlighted how and why legislation which doesn't provide clear rules about disclosures to parliamentarians or the media cannot work as an effective safety valve for good governance and the wider public interest.

Queensland Health nurse Toni Hoffman's internal disclosures about Dr Jayant Patel were protected, meaning she could not be sued or disciplined for raising them. Instead anyone who undertook a reprisal against her would be liable.

However, no one dealt with her real and genuine concern about patient safety, at least not in a reasonable timeframe. Ironically, the external disclosure which did lead to action — to her Member of Parliament, who made it public — was not protected.

For a while Hoffman had to pretend she hadn't made this disclosure, even though her internal disclosures were perfectly open. She could still be charged with releasing official information, or sued by Patel for defamation.

Queensland is not alone in Australia in failing to set out when whistleblowers can properly make wider public disclosures.

The recent review of Australian legislation by Dr A.J. Brown, of Griffith University's "Whistling While They Work" project highlights that only in New South Wales can public disclosures be protected and then it is in quite exceptional circumstances.

The Bundaberg Hospital inquiry recognised the problem and recommended that it be fixed but I doubt their specific, rather rigid, solution — which is now being considered by the Queensland Parliament — will give the public the confidence that real concerns will be addressed locally and that, if they are not, they can be raised outside before serious damage is done.

In considering how to resolve this issue, I hope legislators and policy-makers in Queensland will look at the experience in the United Kingdom where the Public Interest Disclosure Act 1998 is working well and helping to deter wrongdoing at work and opening up organisational cultures.

The UK Act has a "stepped disclosure" regime. On the first step, an employee need only have a "genuine suspicion" of wrongdoing to be protected for making a disclosure internally — mostly the natural and best thing to do for all concerned.

The second step is where an employee doesn't trust the internal route or that doesn't work. He is protected for going direct to a regulatory authority — such as the Ombudsman, corruption commission or a corporate regulator — if he shows there is good evidence to support his concern.

But the UK law does not say that is the end of the matter. It also protects wider public disclosures where the employee has some valid cause to go public (fear of reprisal or cover-up, where the employer or regulator has failed to deal with it properly or it is very serious) and the particular disclosure is reasonable.

The UK approach works because it recognises that employees should be encouraged to first try to blow the whistle internally, wherever possible.

However, a few organisations are corrupt, others can become complacent and too many people can be tempted to cover up problems — even where they pose a grave risk to the public. For that reason the UK law provides an effective and workable safety valve.

The benefit of a stepped disclosure regime is not just in protecting the whistleblower from reprisals. The risk of external disclosure creates a real incentive for any sensible organisation to make it safe for their staff to voice their concerns internally, and sooner rather than later, and that when the whistle is blown the problem is addressed.

The reverse is also true. A workplace where — in the absence of safe alternatives — outside disclosures are seen and used as the legitimate first port of call, reflects poor management and weak leadership. Equally, a legal framework that does not give clear signals as to when it is OK to go public — to MPs, Non Government Organisations and the media — will end up fostering and furthering a culture of anonymous leaks and agenda-playing rather than one which makes everyone see their role in upholding the public interest.

This stepped approach works in practice in the UK and has the support of leaders across business, public sector and regulatory fields.

If legislation has to be passed now, it's a model that's well worth following — and if there's more time, it may well make sense to wait for the results of the current review of whistleblowing schemes across Australia.

Guy Dehn is director of Public Concern At Work (UK), and a visiting fellow with Griffith University's "Whistling While They Work" project.

Whistleblowers in peril

The US Congress should reverse a pernicious removal of protection of federal employees.

Editorial
Nature, 14 September 2006, p. 121

In another worrying instance of its tendency to quietly arrogate new powers to itself, the Bush administration has reversed two decades of precedent and declared that important whistleblower protections in the Clean Water Act do not apply to federal workers.

This binding change in the interpretation of the law was instigated by a top Department of Justice lawyer a year ago. Steven Bradbury, acting assistant attorney-general in the department's Office of Legal Counsel, gave a straightforward reason for his decision: the Clean Water Act does not list the US government as a "person" in its definition of employers from whom whistleblowers may seek redress in the event of retaliation by their bosses. He concluded that the ancient legal doctrine of sovereign immunity — which says the government must explicitly consent to be sued — makes the federal government immune from the whistleblower provisions in the law.

The water law was written to protect workers in the private and public sectors who report breakdowns in its enforcement, manipulations of science, or clean-up failures. Its whistleblower provisions essentially apply to any action a worker might take in a sincere effort to do a good job — and hence go further than a different, government-wide whistleblower law that is still in place but that protects only the reporting of gross mismanagement or violations of law.

The water law's provisions have real teeth: whistleblowers who are found to have legitimate complaints are eligible for reinstatement to lost jobs, back pay, and compensatory damages for loss of reputation and emotional distress — damages that in the past have ranged in the tens of thousands of dollars.

Exempting federal employees would expose to retaliation some 170,000 members of the federal workforce in a dozen different agencies, from the Forest Service to the US Geological Survey, who might make efforts in good faith to see that the law is properly enforced. Scientists could feel this particularly strongly, as the problems they encounter — such as the skewing of a methodology or the removal of a conclusion from a report — don't typically violate a law. This change is bound to suppress their willingness to report such events.

Superficially, the justice department has made a defensible case. But it goes against two decades of precedent during which the Department of Labor adjudicators charged with administering whistleblower law repeatedly rejected arguments for the government's sovereign immunity under the water law. Legal doctrine holds that, when an agency such as the labour department has a long-standing interpretation of a law, as in this instance, and Congress does nothing to change it, it can be assumed that Congress accepts that interpretation.

But what is particularly disturbing about this change is the way it was brought in under the radar, remaining unpublished for 12 months and unknown to the federal workers potentially affected by it. It only became public last week, when the advocacy group Public Employees for Environmental Responsibility released a letter from Bradbury, which it obtained under the Freedom of Information Act after stumbling upon a reference to it in a whistleblower complaint. This is hardly a fitting approach to jurisprudence in a purportedly open and democratic society.

It is common knowledge that the Bush administration has fought against implementing more stringently protective environmental laws, and its enforcement of existing laws has been weak to a fault; according to the justice department's figures, government requests for criminal prosecutions of environmental lawbreakers fell by half in the five years to 2005. In such an atmosphere, whistleblowers within the government become a key defence against further erosion of environmental standards. Removing their protections seems all but certain to hasten this erosion.

There is a possible remedy, however: Congress should amend the Clean Water Act to define the US government as an employer against whom whistleblower complaints can be brought.

Secrets and lies

Freedom of information editor **Michael McKinnon** finds the door to greater scrutiny of government is opening, despite a High Court rebuff.

The Australian, 25 October 2006, p. 17

WHEN a High Court judge wandered into the Brisbane Writers Festival last month looking for the lecture room, he was helped by a friendly academic. As he was shown to the right location, Ian

Callinan was given a stern rebuke. His guide, a professor, told the startled judge that he had failed democracy in the decision against *The Australian*'s appeal in the McKinnon v Treasury case. The red-faced judge suggested *The Australian* should "have a closer look at the judgment."

Callinan's alleged failure was over a four-year battle against government secrecy fought by *The Australian* through the Administrative Appeals Tribunal and the Federal and High courts. The battleground was freedom-of-information laws set up in the early 1980s to give everyone the right to access government documents. Even in a democracy, politicians cannot be trusted to tell the truth about their failings. Freedom-of-information laws play a vital role in allowing access to the truth, especially in a climate of growing government attacks on leaks and whistleblowers, and an enfeebled Senate.

Despite being a superb tool for accountability, FOI in Australia is widely regarded as a joke, not least because in 1985 the then Opposition treasury spokesman, John Howard, lost a landmark case against the Labor government. That case established the use of public interest arguments against disclosure that have been widely exploited by evasive politicians and public servants to block FOI requests ever since.

As a result, how much income tax you really pay, First Home Buyers Scheme fraud, the devil in the detail of industrial relations reform and even whether alleged terrorist David Hicks is legally held by the US are just some of the secrets withheld from FOI requests on the basis of arguments from the Howard case that public servants shouldn't have to put up with scrutiny and the public is too stupid to understand the reasons anyway.

When the commonwealth Treasury blocked this newspaper's FOI request for income tax and first home buyer documents, *The Australian* fought it all the way to the High Court. There was a real chance of overturning the 1985 Howard case, given that there's a rolled-gold public interest argument in favour of releasing the true extent of income tax. But on September 6 the High Court decided three-to-two against *The Australian.* It decided the Treasurer, Peter Costello, had the right to issue so-called "conclusive certificates", which means any AAT appeal can only look at public interest factors as to why documents shouldn't be released, not why they should.

The Government's right to hold secret hearings using secret evidence while blocking the public's right to know was upheld, with any AAT challenge against a conclusive certificate likely to flounder hopelessly.

In a world of growing government power and reduced accountability, democracy suffers, as does faith in democracy, and the court's decision is a further setback. Governments lie. The longer they remain in power, the more they lie to cover their failings. The children-overboard lie used by the Government to turn an election campaign in its favour, weapons of mass destruction in Iraq and the AWB scandal are some examples of the high price of such secrecy.

The Government gets away with ignoring FOI laws by issuing a certificate stating it is against the public interest to release any information. An FOI application by *The Australian* for key industrial relations reform documents has been refused and a conclusive certificate issued. Among the reasons is the argument that if released, documents could lead to "speculation about possible future workplace reform options which are not government policy." So if the Government was advised its IR reforms would, for example, allow low-paid workers to be exploited, it would not be in the public interest for anyone to know.

But the High Court's judgment has not only strengthened political support for FOI reform, it has also opened the door for further legal action to force changes: a view supported by the Government's lawyers according to advice recently obtained by *The Australian,* using FOI. According to government lawyers, any AAT challenge against the public interest arguments used to justify secrecy is probably impossible, with any appeal on the facts equally difficult, given that just one public servant's evidence, heard in secret, is enough to convince the tribunal.

In response to the McKinnon case, the ALP has promised to abolish certificates and improve FOI laws if elected to government. While Oppositions routinely make promises that are forgotten when they gain power, two weeks ago the ALP upped the ante when its legal affairs spokeswoman Nicola Roxon introduced a private member's bill, the Freedom of Information (Abolition of Conclusive Certificates) Bill 2006.

Roxon is backed by the formidable Labor senator John Faulkner, who says caucus endorses the private member's bill and is committed to fixing the frayed FOI laws.

The ALP's policy was first adopted by a Mark Latham-led Opposition in a direct response to *The Australian*'s legal battle against the certificates. But, as Roxon explains, the urgency for reforms has heightened following last month's High Court decision. "For too long, Howard government ministers have hidden their incompetence behind conclusive certificates," Roxon says.

Under Labor's plan, all government claims for FOI exemptions will be fully tested with public interest arguments for and against release. While extra protection has been added for cabinet, security and foreign affairs documents, the ALP will also strengthen the object of the act and explicitly state that protecting a government from embarrassment is not a public interest factor.

This is timely as Treasury secretary Ken Henry is on the record as saying that some FOI applications to his department are motivated to cause embarrassment and will be stopped by using certificates. This is despite section 11 of the Freedom of Information Act clearly stating an applicant's motives cannot be considered when processing a FOI request.

While FOI reform is part of a broader ALP election strategy targeting government dishonesty and lack of accountability, the Prime Minister, who is responsible for the term "non-core" promises, says the reforms will never see the light of day.

[The remainder of this article is omitted due to lack of space.]

Whistleblowing on an anonymous website

I established my website after one of those crisis experiences that you have when you try to blow the whistle using the good old "official processes" — one of those times when you think, "This is all too much. I am getting nowhere."

I had been writing to a senior Queensland public servant about workplace bullying, etc. for almost two years, but when I met him in late 2004 I found that he had only a very limited understanding of my disclosure. As he tapped at his computer, searching for my emails, I realised that he had not been reading my letters and documents.

Later he stated that all of the letters and documents that I had sent to him before the meeting had been … well, he did not exactly say what had happened to them. He just said that they were "not in his possession."

This was the third time that a huge number of my letters and documents had been "lost." I did not know how to deal with this continual "Just remind me — what was your complaint again? All of your letters and documents have been lost!" public service strategy.

What I really wanted to do was to put all of my documents on a website so that they could not be "lost" again, but I knew that I couldn't do that for privacy reasons. And also because some aspects of my own case were so disturbing that, even to this date, I can't bring myself to tell the world (and my local community in particular) about them.

So I decided to start up a website which exposed the "We've lost all of your documents" strategy — and all of the other bully-friendly strategies used by public servants to avoid hearing the whistles being blown all around them.

A few days after the meeting with this public servant I found the website www.freewebs.com and I had my own website about fifteen minutes later. Freewebs is designed to be used by people with very few computer skills: setting up a website on freewebs is as easy as sending an email.

The basic website was free but after a few days I knew that the website was going to be really useful to me and so I bought my own domain name — www.badapplebullies.com — so that the website would look more professional. It cost $148 for three years.

12,500 pages of Bad Apple Bullies have now been read for the first time. I think that it is mostly being read by public servants from various government departments. So the website has proven to be a far more effective way for me to communicate my concerns than writing to one public servant who wasn't even opening my emails. People who are reluctant to read a letter or a document will read a website.

A few weeks after I started the website I contacted the wonderful Tim Field and he was kind enough to give me a couple of links on his website www.bullyonline.org. This was a big help in getting my website on Google and other search engines. When I write to public servants nowadays I put www.badapplebullies.com under my signature, and this usually prompts a shower of hits on the website.

I have also had postcards printed promoting the website ($26 for 100). I mail them out to schools at random addressed to "The Staffroom." Of course I know that some principals will just tear the postcard up, but I hope that each time a principal rips up a Bad Apple Bullies postcard he is reminded that if he bullies a teacher out of work, that teacher might also start up a website and expose his bullying behaviour.

When I first began the website I was very worried that I would be sued for defamation or accused of stalking the people who had bullied me. So I have not named any of the people who bullied/mobbed me and I have not identified myself as webmaster. And I don't promote the website in my own local area.

To this date I have not been threatened in any way because of the website.

For me the huge advantage of using a website is that it is a calm and controlled way of whistleblowing. The stress of the workplace bullying had affected my health quite badly and I didn't want to get involved in anything that would make me ill again. The website is a protest that I can make at my own pace and in peace and quiet.

Similarly, I didn't want to get involved in taking legal action against the Department because I knew that it would be very stressful and that the Department employed lots of solicitors and that they had a bottomless pit of taxpayers' money to spend on a court case. The Department would soon run me out of money and out of my home. I hadn't heard of anybody who had been really happy with the outcome of a legal case. The law doesn't seem to work very well for ordinary Australians.

Setting up a protest website is a much cheaper option than taking legal action. And it gives you the opportunity to explain very clearly what you are protesting about. Public servants love to create mystery and confusion.

The most popular page on Bad Apple Bullies is the news page. I look for news items about public service bullying and then edit the articles and copy them onto the news page. I highlight aspects of these cases that are similar to my own case in some way. This helps me to identify common patterns of public service behaviour and to understand my own case better.

The page that I think is potentially the most valuable is "For Administrators." I now realise that the Queensland public service is an oral culture and that public servants are selected for promotion because they "interview well." So their decisions concerning you tend to be based on their own gossip rather than the letters and documents that you have spent weeks carefully writing.

On the "For Administrators" page I am developing an in-service course for administrators which is based on talking (role-play). I am trying to develop the capacity of administrators to hear alarm bells ringing when they are gossiping to each other about teachers.

For example, if an acting principal rings a district office on the fifth day that they are acting principal to tell the senior officer that they want to put a

classroom teacher into a punishment program, I want alarm bells to ring in the senior officer's head. And I want the senior officer to take responsibility for protecting the teacher from the risk of workplace bullying by an inexperienced administrator.

Of course I don't really imagine that the department would ever agree to run such an in-service course, but my hope is that administrators will gossip to each other about the "For Administrators" page and that this will raise their capacity to hear alarm bells ringing when they are gossiping to each other about teachers.

At the November Whistleblowers Australia conference I met a woman who was having problems with another Queensland Government department. She told me that she had found my website several months ago and that it was "Wonderful, wonderful!"

I will never forget her comments. It was amazing to actually meet somebody who had found my website when they needed help and support. And it was also amazing that this woman was not even a teacher, but she had still found the website useful. And that this had all happened without me knowing anything about it.

I have been trying to get the department to investigate my own complaint for six years now, and they are still working very, very slowly through their official processes. Of course it is ridiculous that the official processes take so long, but now that I have a website I actually find it quite interesting to record the Departmental delaying and avoidance strategies and the continual changes to the official "story." Trying to figure out the true facts of the workplace bullying has become a sort of detective mystery that I am trying to solve and that the department desperately doesn't want me to solve.

When I talk to public servants they never mention the website. But they are always willing to talk, and they often ask me, "What is it that you really want?"

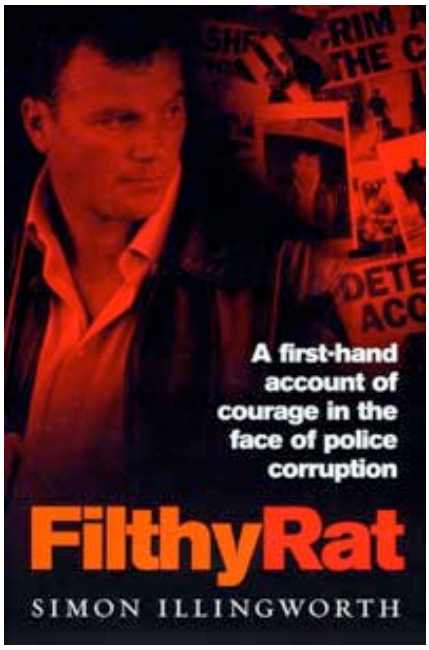
I tell them that I want to believe that the bullying will stop. I want to believe that no other teacher will be driven into ill-health retirement. I want Queensland teachers to be safe at work.

I tell them that I want what I have always wanted. I want to change the culture.

The courage of a "filthy rat"

Brian Martin

Simon Illingworth's book *Filthy Rat* is an outstanding account of police whistleblowing. Illingworth was a member of the Victorian police, doing very well at his job, but then he encountered police corruption and refused to go along with it, thereby becoming a "rat."



The number of corrupt police is relatively small, but they have considerable power because even fewer police are willing to openly oppose them. Corrupt police keep detailed records on other police, documenting minor violations of the numerous rules governing police behaviour, and use this information as a weapon against anyone who breaks the code of silence against revealing corruption.

Illingworth tackled the dangerous alliance of criminals and corrupt police. He had successes, but he paid an enormous penalty.

Because of his efforts in bringing corrupt police to justice, he became a target by members of this alliance. He received threatening phone calls. In a court building, a barrister for a criminal recited Illingworth's home address to him, an implied threat that people knew where to find him. He was stalked by criminals. He was savagely assaulted.

To remain safe, Illingworth moved house and eventually had to stay with friends, moving frequently. He describes the collapse of his marriage under the strain, the damage to his health, the economic costs and the destruction of his peace of mind.

Illingworth eventually made the wise decision to tell his story publicly. He went to the media, and received courageous support from the ABC, which broadcast a powerful episode of *Australian Story*. (In addition, *Filthy Rat* is published by ABC Books.)

Illingworth, on leave for stress, negotiated to leave the Victorian police. He was offered a payout of $250,000, but refused because the package included a silencing clause. He told the media about the silencing clause: the Melbourne *Herald Sun* ran a front-page story with the title "You can't gag me" and a few days later published Illingworth's long letter to the police commissioner explaining his decision. He ended up getting the payout without signing away any of his rights. He states, "People shouldn't be allowed to sign away their rights and freedoms as part of a settlement process."

Filthy Rat is an autobiography, but Illingworth's main attention is on his police career, in particular his confrontation with corruption. He tells about his upbringing, personal life and recreational pursuits, such as surfing, in ways that throw light on his experiences in the police.

Illingworth is reflective about his decisions. He pinpoints the time when he should have left the force but didn't, because he was under the illusion that there was some point in the future when honest police would win against corruption. He later made the wise decision not to seek immediate justice for himself but to help others: "I hit rock bottom, but there was something I had to promise myself. I had to make sure I did everything in my power to ensure that this situation would never happen to anyone else."

Filthy Rat is engagingly written, nicely produced and contains numer-

ous photographs. It is an exemplary and cautionary story of whistleblowing, especially good in portraying the enormous psychic stress of dealing with threats and reprisals. Illingworth knew his life was in danger. Ultimately, the only solution was to get out.

If any of Australia's police forces was really serious about dealing with corruption, it would hire Illingworth to head a well-resourced anti-corruption unit, and give it solid backing. Don't hold your breath.

Brian Martin is international director of Whistleblowers Australia.

Academics speaking out

Brian Martin

There are lots of good reasons to speak out. You might want to comment on a current public issue, to publicise your research findings or to expose a problem in the university.

But there are risks, or at least you imagine them! You think that if you offend someone powerful, this might jeopardise your tenure or promotion application. Your grants might be blocked. You might be sued for defamation. A big company like Gunns might sue you for conspiracy, tying you up in court for years. You could even be hauled in by ASIO and interrogated.

Most of these are pretty unlikely. Fears can overwhelm good sense. If you appear in the media, probably the biggest risk is that some of your peers, who think serious scholars should only communicate in academic forums, will think less of your scholarly achievements. On the other hand, others will appreciate your public engagement.

Risks from speaking out do need to be taken seriously. This is something I've been studying for a long time. Over the years I've spoken to hundreds of dissidents and whistleblowers. A group of us edited a book titled *Intellectual Suppression* published 20 years ago.

More recently, after being president of Whistleblowers Australia and hearing case after case, I wrote *The Whistleblower's Handbook* so I wouldn't have to keep repeating the same advice. I maintain a large website on suppression of dissent.

Preparation

If there is a single lesson from all this experience, it is to prepare carefully before speaking out. Preventing an attack is far better than dealing with one.

Part of preparation is getting your facts right. Before sending an email claiming corruption, ring a few people to check your information and make sure you've considered other viewpoints.

This applies to scholarly work too. Of course researchers are careful, but if the findings are potentially contentious, it's a good idea to send a draft to likely critics. Sometimes it's hard to get a response. When I wrote a book about the fluoridation controversy, I readily obtained comments from anti-fluoridationists, but it took some effort to find pro-fluoridationists willing to give feedback.

Another part of preparation is assessing likely responses. Speaking at a public meeting or rally on a matter of national importance may get you into trouble, but probably not. Usually, it is far riskier to speak out about an internal matter such as mismanagement, harassment or conflict of interest, within your own organisation.

An absolutely crucial part of preparation is consulting others about the most effective way to proceed. Ideally, you should talk to several people who've done just what you're planning to do. Experience is a wonderful guide.

They might advise on the text of your speech or executive summary. They might suggest waiting for a more opportune time. They might advise joining forces with others.

There is definitely safety in numbers. Petitions are safer than solo statements. Sometimes it's necessary to act alone, but if the risks are great, it's wise to spend a lot of effort building an alliance.

Even with the best of preparation, there are no guarantees. There is a lot of contingency in attacks. In 1971, Clyde Manwell, professor of zoology at the University of Adelaide, wrote a letter to the newspaper about pesticides. How could he have predicted this would lead to four years of bitter struggle resisting an attempt to dismiss him?

Dealing with attacks

If you do come under attack for speaking out, there are some predictable patterns. Attackers usually prefer to operate behind the scenes. They may put a quiet word to your superiors. They may engineer for your paper to be withdrawn from a conference or your speaking slot moved and shortened. You may receive veiled threats.

Sometimes, after you speak out, your students and supportive colleagues suffer reprisals, as an indirect way of attacking you.

If you're reprimanded, put on probation or targeted for dismissal, it is tempting to lie low due to acute embarrassment and humiliation. But by far the most effective response is to expose the attack.

This means obtaining good documentation. Make sure to save that email with a threat.

Going public to oppose attacks on free speech may mean sending an email to a group of supporters, putting up a website or seeking media coverage. Going public about reprisals has the advantage of increasing visibility about the matter you spoke out about.

A standard method of attack is denigration. You might be savaged under parliamentary privilege, but more likely just be the subject of rumours. Derogatory claims may be made about your scholarship, your honesty, your personal relationships, your motives or your sanity. It is common for whistleblowers to be referred to psychiatrists.

You may have evidence to counter these allegations, for example publication lists or staff evaluations. If you have allies, they may be willing to vouch for your good character and contributions. It's best to respond with dignity, and certainly unwise to counterattack.

Almost always, an attack will be said to be something else. Your paper is rejected because of methodological flaws. You've lost your job because of a restructure. These explanations may be sincere and sometimes they are correct.

Your task is to give an alternative explanation, namely that you've been

treated unfairly. The double standard test is useful. Maybe you've been denied leave or tenure even though many others, with poorer performance, have been granted it.

The instinctive response of many people under attack is to seek justice through official channels, such as grievance procedures, the ombudsman or the court. This is usually unwise.

I've heard countless stories of whistleblowers — including many academics — who have been disappointed by official channels. William De Maria's pioneering research backs up this impression: whistleblowers reported being helped in less than one in ten approaches to agencies.

The problem is that official channels are stacked against the employee. They are interminably slow. They are procedural and seldom provide moral justice. They eat up vast amounts of time and energy, making it exceedingly difficult to maintain scholarly activities.

The employer has much more money and staying power, and less to lose. Most importantly, official channels take the issue out of the public eye.

Of course you think your case is different: you have truth on your side! If you really want to go down the official channel road, first find half a dozen others who've done the same thing, and find out what happened to them. If you can't find this information, be sceptical.

The judgement of experienced whistleblower advisers is that Australia's whistleblower laws are largely useless. I wrote an article, "Illusions of whistleblower protection," to argue this point. Instead of using official channels, it is far more effective to mobilise support.

Many academics made submissions to the 2001 Senate inquiry into Higher Education, but nothing happened as a result. Another official channel, another disappointment.

Self-censorship

Tenured academics are remarkably privileged. Though our jobs are not perfectly secure, we have far more freedom to speak out in the public interest than employees in government and industry.

The biggest risk to free speech by academics is not reprisals but self-censorship. The best antidote is for more people to speak out.

A slightly abbreviated version of this article appeared in *The Australian,* 15 November 2006, p. 34.

Challenging the misuse of psychiatric opinions

Mary Lander

Is it lawful for public sector managers to alter medical opinions? Is it acceptable practice for them to make false statements to other staff about an employee's mental health and never correct the statements even if the employee is cleared of the allegation by way of an assessment?

Based on the response I received from the Public Service Commissioner, on behalf of the Minister assisting the Prime Minister on Public Service Matters, it is both lawful and perfectly acceptable for them to do so. As this comes from the very top it then applies not only to the Department of Health and Ageing, the agency involved in my own case, but all Commonwealth Government agencies.

Some time ago, I wrote letters to the Prime Minister and Auditor-General (the latter copied to the Prime Minister as well) in which I reported matters relating to impropriety and the maladministration of Medibank Private during the period leading up to announcement of the $175 million loss. The Department of Health and Ageing had oversighting responsibilities for the Government-owned Business Enterprise. I also made reference to another matter relating to bullying in the Department. My letters were referred to the Department for response.

Management used Public Service Regulation 3.2 to compel me to undergo a psychiatric assessment. I was cleared of the allegation of having a mental or psychiatric illness via an assessment. However, it was during the course of the assessment itself that I started to become aware of the extent to which management had gone to try to influence the opinion of the psychiatrist and an outcome. Don't think for a moment that the experience only involves your attending a psychiatric assessment. It is far more involved than that and management will set out to do as much damage to you as they can in the process.

Based on information I had sourced later, the human resources manager had obtained personal information and effects without my knowledge. Using this material, she initially consulted two psychologists or psychiatrists, also without my knowledge, and provided them with what she claimed was "evidence" to support her allegations. The human resources manager had tried to obtain an opinion to the effect that I had 'psychosis' (a form of severe mental derangement where a person cannot distinguish between that which is real and that which is not real). My work performance had been praised a short time prior and management had never raised issues relating to my mental health prior to this.

The human resources manager also sought an opinion from another psychiatrist at around the same time that they had suspended me from duty, during which time I hand-delivered a note to advise that if they continued with this course of action, I would be contacting the Senate, the Ombudsman, the DPP, etc. The human resources manager obtained an opinion from a psychiatrist on this letter as well and then communicated to the agency head that she had provided the doctor a copy of my most recent letter and that he in turn had provided an opinion to the effect that I "must be tipping over the edge into insanity".

A work colleague later advised me that during the period that I was suspended from duty the human resources manager and the branch manager (implicated in both disclosures) had addressed a meeting of about 10 staff members and advised them that I had been suspended from duty because I had mental health issues and not to speak to me if I approached them but to walk away and contact the human resources Area immediately.

To be subjected to an experience like this is very traumatic and, even if you are cleared of the allegations through an assessment, the damage is considerable and it is long-lasting. But

that of course is precisely the objective.

I referred my complaint to the Public Service Commission and a review of actions was subsequently conducted by the Merit Protection Commission. It was through this process that I obtained documentation relating to the incident including file records of the verbal opinions claimed to have been obtained prior to the assessment.

I could not understand how a psychologist or psychiatrist, who had never met or spoken to me, could provide opinion to the effect that I was "tipping over the edge into insanity" and I questioned the validity of the opinion claimed to have been verbally obtained. The review officer refused to discuss that matter further with me as well as issues relating to staff being told that I had mental illness when I did not and closed the case, providing me no remedy.

Despite the fact that I was cleared of the allegation through the course of an assessment conducted by another psychiatrist, this still bothered me for a considerable length of time. The earlier opinion itself seemed highly questionable. I assume this to be the opinion management had referred to when advising staff I worked with that I had "mental health issues" and that they had obtained an opinion to this effect.

I eventually referred the matter to the Medical Board. In response, I received a statement from the medical practitioner in question. He stated in his signed statement that the verbal advice he had provided was as follows: "My opinion after considering all the information that was presented to me was that the situation was such as to suggest the possible presence of mental illness, as one explanation. To exclude or confirm this possibility, I recommended that a psychiatric assessment be made"

I do not know what information was sent to him other than my note to advise that if they took this course of action I would write to other authorities. In any event, the opinion that he had provided was vastly different to the version that the human resources manager had communicated to others. He did not state that I was "tipping over the edge into insanity" nor had he confirmed the presence of mental illness.

I recently referred the matter to the Minister assisting the Prime Minister for Public Service Matters including evidence of the alteration of a medical opinion and witness statement advising that staff were told I had mental health issues when I did not and that the statements were never retracted or corrected even when I was cleared of the allegation.

Psychologists and psychiatrists do not even use the term "insanity" and I have no doubt that the opinion had been altered by the human resources manager. "Insanity" is not in the diagnostic manual that is used by psychologists and psychiatrists (being The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*). "Insanity" is a term that is used by legal practitioners not medical practitioners.

The Public Service Commissioner in her response to me on behalf of the Minister assisting the Prime Minister for Public Service Matters stated that she believed the human resources manager behaved professionally and responsibly and in a manner consistent with her duty of care responsibilities. She dismissed the issue of the medical opinion having been altered as being relevant and made no comment about the fact that staff were told I had mental illness when I did not and that the statements were never retracted or corrected. She considered my complaint about the matter to be vexatious and refused to investigate it.

I had wondered for some time how the human resources manager could possibly consider it to have been fair or reasonable to do this to someone and I certainly had cause to question her state of mind due to the fact that she could not even distinguish between a medical opinion that was real and one that was not real. I had also wondered how she would feel if someone were to accuse her of being mentally deranged and use information that related to her personally in some way, to support an allegation that she was in a high risk group for mental illness.

I eventually sent her an email doing just that. Of course, as an experienced bully, and in the knowledge that I had also obtained evidence to prove that she had altered a medical opinion about me and communicated false medical information to others, she then feigned victimhood and claimed she had done nothing wrong and had only done her duty and that my allegations were offensive.

My employment was terminated by the agency head who worked closely with the human resources manager at the time and who, of course, was ultimately responsible for the procedures put into place. It was deemed by the agency head that making such allegations about the human resources manager was "not treating her with the courtesy and respect due to her as an APS [Australian Public Service] employee and without harassment".

My allegation about the human resources manager was deemed to be a breach of the APS Code of Conduct so grave that my employment was terminated and the agency head took this action knowing also that I needed to pay $5,000 a year for a drug for a tumour that is not on the PBS [Pharmaceutical Benefits Scheme].

It is difficult not to notice the difference in terms of the way such things are viewed, depending on who it is that stands accused of mental illness.

The issue of the alteration of medical opinions and the obvious ease with which public sector managers can get away with the practice certainly raises issues about some aspects of the processes that are currently being used and are those sanctioned not only by the agency head but also by the Public Service Commissioner and the Minister assisting the Prime Minister for Public Service Matters.

I would certainly advocate by way of reform that no medical opinions should to be used or communicated to others for any purpose unless they are provided in writing and signed by the medical practitioner providing the opinion. That would be a reasonable thing to suggest as a bare minimum but of course that would make it more difficult for management to damage employees who raise issues that have implications for senior management.

I could not help but notice the article in the *Canberra Times* on 2 December 2006 advising that the Public Service Commission has issued its State of the Service Report for

2005-06. It highlighted the number of employees who had their employment terminated for privacy breaches and indicated that this "demonstrated the importance the public service placed on protecting personal information". Obviously that does not apply to personal and health information of APS employees, in instances where they report matters to the Prime Minister and use language that may be critical in any way of any senior managers within an agency or an agency head, either expressed or implied.

The Public Service Commissioner stated that it was not the issues I raised but the language that I used that prompted the action. I did refer to the agency head as Goliath but I'm certainly not the only one who has questioned aspects of her management style. Following a stint in Prime Minister & Cabinet during which time she was taskforce chair at the time of the "children overboard scandal," she was awarded a Public Service Medal by the Prime Minister and promoted to the position of agency head in the Department of Health and Ageing.

> **The fall girl**
> To the Defence Force big guns she's a harridan — so intimidating they weren't game to tell her bad news. … She's famous for shocking dithering blokes round a meeting table with: "Haven't any of you got balls!" — *Sydney Morning Herald,* 28 June 2002

I have written to the Australian Federal Police who have advised they only investigate if an agency requests an investigation. Evidence and witness statements provided by the person adversely affected is not sufficient to warrant an investigation by the AFP. Of course, they say this knowing that neither the agency involved nor the Merit Protection Commission would want it investigated.

Fairness and equity in the APS?

Mary Lander is a member of Whistleblowers Australia.

Draft Minutes of WBA Annual General Meeting

Brisbane, Queensland
26 November 2006

1. Chaired by J Lennane, President. Minutes taken by C Kardell, National Secretary.

2. The attendees were J Lennane, C Kardell, T Hoffman, F Perera, B Martin, T Sharp, K Smith, J Murray, W Stanislav, S van de Wiel, G McMahon, P Bowden, R Steele, R Cosser, J Pezy, K Lindeberg, P Bennett, P Weslep, M Edwards and B Passimonte including 4 visitors

3. Apologies were received from G Turner, P Sandilands, D Maitland, C Pelechowski, O Miller, K McEwen, M Love and S Carroll.

4. Previous Minutes AGM 2005

J Lennane referred the meeting to the previous minutes published in the January 2006 edition of *The Whistle*, a copy of which had been made available to all present immediately prior to the meeting. She called for the previous minutes as published to be accepted as a true and accurate record.

Proposed: B Martin. Seconded: F Perera. Carried.

5. Business arising

Financial Priorities
At the last AGM Brian Martin, Peter Bowden, Feliks Perera and Stan van de Wiel were nominated to form a subcommittee to consider the group's financial priorities. Brian reported the subcommittee had circulated some proposals to the national committee and had received some feedback, but that he didn't have the information with him.

Action: Brian to re-circulate the results of the priority-setting exercise to the new national committee members for their consideration.

6. Election of Office Bearers

National President

Peter Bennett, being the only nominee, was elected unopposed.

Jean Lennane congratulated Peter and thanked him for standing, saying she needed a break and felt it was time to step aside for another. Jean noted Peter brought with him some very valuable experience and co-incidentally was now retired and well situated, living in NSW near the border with Queensland.

Executive Positions

J Lennane stood aside for Peter Bennett to proceed as the initial returning officer.

Vice President

Jean Lennane (NSW) being the only nominee was elected unopposed.

J Lennane resumed the chair and served as returning officer for the remaining positions.

The following nominees were elected unopposed.

Junior Vice President: Kim Sawyer (WA)
Secretary: Cynthia Kardell (NSW)
Treasurer: Feliks Perera (Qld)
National Director: Greg McMahon (Qld)

National Committee Members (6 positions)

The following six nominees were elected unopposed.

Brian Martin, International Director (NSW)
Geoff Turner, Communications Director (NSW)
Catherine Crout Habel, Committee Member (SA)
Matilda Bawden, Committee Member (SA)
Stan van de Wiel, Committee Member (VIC)
Shelley Pezy, Committee Member (SA)

Jean thanked the incoming members and urged them to continue to work for the group's advancement.

She noted that under the Constitution branch presidents John Pezy (SA) and Peter Bowden (NSW) were automatically members of the national committee and that Peter had offered to continue to be responsible for education.

7. Position of Public Officer

J Lennane advised the meeting that Vince Neary was prepared to continue in the position of Public Officer, if required. She thanked Vince for his willingness to continue in the position. Agreed.

J Lennane asked the meeting to nominate two members to sign an authority prepared by V Neary, to lodge the required annual fee with the NSW Dept. Fair Trading.

Motion moved by B Martin to nominate J Lennane and C Kardell so to do.

Seconded: F Perera. Carried.

8. Treasurer's Report

The treasurer, Feliks Perera, tabled a financial statement ending 30 June 2006 and briefly stated the details as follows:

Income
Subscriptions, $3,975.00
Donations, $140.00
Interest, $0.89
Total, $4,115.89

Expenses
Whistle production costs, $1849.00
NSW Return to Branch, $500.00
Total, $2,349.00

Excess over income over expenditure for year, $1,766.89

Balance Sheet to 30 June 2006

Accumulated Fund B/fwd, $7,183.49
Excess of income over expenditure for year, $1,766.09
Sundry Accruals: Return to NSW Branch, $500.00
Total, $9,449.58

Assets
Balance at Bank, $9,213.38
Book Account, $236.20
Total, $9,449.58

Feliks explained the reduction in income was directly related to fewer new members and renewals than last year and that we needed to increase or at least maintain our member base in the short term, if we are to meet the increasing cost of publishing the Whistle and holding the AGM and conference.

Greg McMahon reported Queensland had hoped to break even on the 2006 conference costs, but attendances were down and costs were up and he estimated it might cost about $1000. Greg asked the meeting to thank Kevin Lindeberg for his work in publicising the conference.

Jean took the opportunity to move a motion to thank Greg and Kevin for their efforts and a most enjoyable and informative conference.

Seconded by B Steele. Carried.

J Lennane asked the meeting to join with her in thanking Feliks for his continuing good work and called for the treasurer's report to be accepted as a true and accurate statement of accounts.

Moved by P Bennett. Seconded by B Martin. Carried.

9. Reports

The President's Report

Jean has been very busy and somewhat distracted by her old whistleblowing interests in mental health and her involvement with the 'Friends of Callan Park' to try to stop the NSW government from selling off Callan Park,

Jean has put detailed historical and other information about the Nazi program to exterminate the mentally ill up on her new website. She maintains our mental health policies achieve the same end, but with less 'conscientiousness'. Jean is keen to warn how easy it is to go awfully wrong, when people such as the mentally ill can't defend themselves and others turn a blind eye.

Jean used the findings made by the coronial inquiry into the death of Gary Lee Rogers to support a request from WBA for the NSW Ombudsman to look into the police handling of the investigation. Jean said the Ombudsman has 'ducked the issue' claiming limited resources.

Tony Grosser, who was wrongly jailed for the attempted murder of a SA police officer sent a Christmas card to thank the group for it's unwavering support. An aboriginal friend and artist has given him an aboriginal painting to sell to raise funds to support his continuing effort to prove his innocence. Tony sent a postcard size copy of the painting to show the meeting.

The Secretary's Report

Cynthia Kardell reported our membership was down on last year at about 200 financial members, which could be an under estimate, because a reasonable number eventually get around to letting us know they have moved house.

Cynthia urged members to encourage those they help, to join. She said that when someone asks how can I pay you for what you have done, jump in, take the opportunity to say you can't, but you could join WBA and support the group and that would be thanks enough.

Cynthia and Jean and occasionally Debbie Locke continue to represent WBA on the Internal Witness Advisory Committee (IWAC) meetings at NSW Police. It has been difficult to maintain momentum over recent years, because meetings are put off or the Chair is all too often standing in for someone who is unable to attend or has been transferred.

Nevertheless we have kept on and a measure of that perseverance is the imminent draft critical incidents policy that may, if all goes well, eventually govern the way a murder investigation is conducted, when the person of 'interest' is potentially a police officer. This new policy direction arose out of our concerns about how the NSW police investigated the death of whistleblower, Gary Lee-Rogers in 2002 and is designed to ensure an investigation is independent and done at arm's length.

We are pleased to report that research into the progress of cultural reform in the police continues to be conducted by an independent body.

Less pleasing are the results of the last research project. The old blokey culture of influence peddling and payback is still very much alive and resisting change (because it can) because the reforms are too tightly focused on too few areas. An example is the operation of the Internal Witness Support Unit (for whistleblowers): it has brought real change, but it has only a limited reach because it is only funded for about 15 internal witnesses a year. We are continuing to push for a more concentrated effort on a much wider front.

Report from Victoria

Stan van de Wiel noted it was good to see five Victorians present at the AGM, but less pleasing to have received so few whistleblower enquiries this last year.

Stan and Kim Sawyer meet informally on a 'needs' basis depending on the enquiries they get and otherwise maintain email and telephone contact. The three main enquiries this year concerned public interest disclosures made by a researcher from Monash University about drugs getting into different areas; a teacher in a private school about the school illegally obtaining funds; and a whistleblower from the Alfred Hospital, who disclosed information about the failure to maintain hygiene and clean equipment.

Stan reported Mervyn Vogt also convened about ten meetings in 2006. Mervyn had received about 20 inquiries and has continued to support army whistleblower Nathan Moore. Keith Potter continued to support Albert Lombardo in his matter.

Report from South Australia

John Pezy reported the SA branch mostly operated as a network and only met as a group when there was a need to meet with a whistleblower to discuss their case.

The SA branch had had a quiet year and continued to support and provide strategic advice to SA members, including ongoing matters concerning Jenny Fox and Dawn Rolvan.

Report from the ACT

Peter Bennett reported they met as a group as and when required, but mostly maintained a network of support.

Peter was pleased to report they had received a letter from both Federal and State ministers, complimenting them on the way they handled the public interest disclosure about the Moomba gas pipeline. The whistleblower did not want to be identified and the ACT group became the public face of the whistleblower. The whistleblower remained anonymous and the government acted on the information they were able to provide and initiated the repair of the pipeline. A large amount of money was involved. Peter thought it a win all round and perhaps a blueprint for future operations.

They have assisted an academic from the University of Canberra in the AAT with a FOI application and in about 24 minor matters.

Report from New South Wales

Peter Bowden reported he had appeared before the Parliamentary Committee on the Independent Commission Against Corruption for the NSW branch to give evidence in the review on the operation of the Protected Disclosures Act 1994.

Peter explained the NSW branch and he had made separate written submissions previously, but it was common ground that there should be a separate public interest disclosure unit, the public sector agencies should be required to be proactive in their support of public interest whistleblowing and whistleblowers, the Act should allow a civil claim for compensation, recent changes to the Corporations Act do not go far enough, so a False Claims Act is required to allow both public and private sector whistleblowers to mount public interest actions on behalf of the state.

The two submissions differed in whether or not a separate disclosure unit should be under the umbrella of the NSW Ombudsman. The Committee shared his view that it would have to be part of the Ombudsman if at all because of financial considerations.

Cynthia continues to convene the weekly caring and sharing meetings in Balmain. Brian, Jean, Cynthia and Peter himself continue to answer calls and Geoff fields the web inquiries, and forwards them on as required.

Peter has taken any and every opportunity to lift the profile of whistleblowing and for example, has given three talks on ethics at Sydney University, a talk at the Woodford festival in Queensland and a presentation to the Griffith University panel in charge of the 'Whistling while you work' research project.

Peter had the opportunity to meet up with Guy Dehn, the head of the UK professional group known as 'Public Concern at Work'. Guy's view is that the measure of the success of any legislation is whether civil claims are being prosecuted. He could be right. About 1000 claims were filed last year in the UK. More than 300 civil claims have been lodged in ten years under the Sarbanes-Oxley act in the US. Only three criminal cases have been filed in NSW over 10 years.

Communications Report

Cynthia Kardell provided a brief report on behalf of Geoff Turner as follows.
The web inquiries are increasing from across the nation, but it isn't proving a problem as Geoff boots most of them on to others, as and when the subject matter dictates. He always asks the recipient to keep him in the loop, so he can know whether or not the inquiry has been dealt with. So far, he reports the system appears to work reasonably well.

Geoff has not upgraded the website as he hasn't had the time. He plans to do it in the coming year when he expects to have time. He appreciates the need for an upgrade and is relieved the people coming to the site don't seem to find it an issue.

International Liaison

Brian Martin has maintained his international contacts with Freedom to Care, the UK group like WBA, and his email in-box is ever increasing. He has written a number of articles published in the media and has given a number of talks, the most memorable being the one he gave to the Australian Institute of Professional Intelligence Officers.

Brian reported the production of the *Whistle* is now a very streamlined operation. He essentially just drops the articles or the best of the available newsprint, which is mostly supplied by associate editor Don Eldridge, into the set format document, settles it and emails it off to the Law Society for printing. So members have to be aware, he hasn't time to solicit articles! They have to get it together themselves.

Brian continues to manage the university website on dissent, which is where the *Whistle* is posted. He was encouraged by a report from Lindy Hazeldine that her article on the website was being viewed over a hundred times each month.

Workshop and presentation

Ms Marissa Edwards, PhD student at the UQ Business School provided an overview of her research into how emotions and organizational climate can act as predictors of silence and whistleblowing.

Ms Edward's presentation prompted a free flow of information and insight once it was appreciated that her research question is what determines how people respond when they witness or experience serious wrongdoing in the workplace. Her methodology included an analysis of the events at Bundaberg Hospital as a series of case studies, semi structured interviews that were currently ongoing and an online survey in 2007. She told the meeting that until recently 'silence' had been largely neglected by researchers and that the area was rich with opportunities to contribute theoretically and practically.

10. Other Business.

i) Committee email list

Brian raised whether or not the committee email list should continue to include other interested persons. The meeting determined to leave distribution as is for general matters, but confine it to the committee for committee agenda items.

ii) Publication of attendees' names

With one exception, which the meeting will respect, the attendees consented to the publication of their names in the draft minutes of the meeting in the Whistle.

iii) AGM budget

Stan asked whether there is a budget for the AGM and if not, should there be a budget. Discussion ensued. The meeting resolved the AGM should attempt to pay for itself: it recognized it wasn't always possible, and in which case WBA would consider an application for reimbursement of reasonable costs.

iv) 'Whistling while you work' research project

Greg McMahon has reservations about our relationship with the Griffiths University research project, and is concerned WBA should not be seen to have endorsed the project or its outcomes.

Peter Bowden made the distinction between individual involvement and organizational involvement. He felt so long as it remained at the level of individual consultation Griffiths University couldn't really put it any higher than that.

Peter Bennett proposed we write to A J Brown, the head of the project, and make sure that that distinction is understood. Seconded by Peter Bowden. Carried.

v) AGM 2007

Jean asked which state would host the AGM next year. Cynthia thought it must be NSW's turn. Peter Bowden agreed the NSW branch would host the AGM in Sydney and asked the meeting when it should be. Jean asked for a show of hands for the months September through to November. The vote was fairly evenly split so Jean suggested the NSW branch could decide the date as well as venue.

vi) Jean Lennane

Cynthia Kardell asked for an opportunity to say a few words about Jean. Brian Martin, Feliks Perera and Greg McMahon indicated they also wanted to speak.

Cynthia told the meeting she had looked back through the years for a phrase or event which best captured the essence of Jean's unerring ability to match the moment. Onward and upward came to mind; whether it was said in triumph or consolation, it always seemed to capture the best of the moment and move it forward.

Jean saw the need for WBA in 1990 and she has never stopped moving onward and upward since. For a start Jean had a part in the early 1990s in bringing on the Wood Royal Commission. In 1996 Jean became a founding member of the Police Internal Witness Advisory Committee, formed to oversee cultural reform in the NSW Police. Jean saw how the influential hid and protected pedophiles and joined with others to lobby, embarrass and urge government to come up to the mark. In about ten short years, from Franca Arena to today, the shift to expose and prosecute pedophiles has been remarkable. Cynthia thanked Jean for her insight and purpose and urged Jean ever onward and upward.

Brian said how grateful he was and had been through the years for her wise counsel and sometimes uncanny ability to predict human conduct, and never more so than in the rather difficult four or so years, when he took on the role of president.

Feliks thanked Jean for her support: he said she had been a real inspiration to him.

Greg wanted the meeting to know how in the early years, Jean had always included him and made him feel he was part of whatever was going on even though he was also a member of WAG and a state away. He appreciated it then and now, and her even handed approach to collaborating with WAG.

11. Close of business

Jean thanked all present for making the two days memorable. She asked them to show their appreciation for Greg McMahon, Kevin Lindeberg and Sonya Adams for making it possible.

See you in Sydney, sometime in 2007!

Meeting closed 3.20pm.

Whistleblowers Australia contacts

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 at 7.30pm, Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.
General meetings are held in the Church Hall on the first Sunday in the month commencing at 1.30pm. (Please confirm before attending.) The July general meeting is the AGM.
Contact: Cynthia Kardell, phone 02 9484 6895, fax 02 - 9481 4431, ckardell@iprimus.com.au
Website: http://www.whistleblowers.org.au/
Goulburn region: Rob Cumming, phone 0428 483 155.
Wollongong: Brian Martin, phone 02 4221 3763.
Website: http://www.uow.edu.au/arts/sts/bmartin/dissent/

Queensland: Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232 (a/h) [also Whistleblowers Action Group contact]

South Australia: Matilda Bawden, phone 08 8258 8744 (a/h); John Pezy, phone 08 8337 8912

Tasmania: Whistleblowers Tasmania contact: Isla MacGregor, 03 6239 1054

Victoria
Meetings are normally held the first Sunday of each month at 2.00pm, 10 Gardenia Street, Frankston North.
Contacts: Stan van de Wiel, phone 0414 354 448; Mervyn Vogt, phone 03 9786 5308, fax 03 9776 8754.

Whistle
Editor: Brian Martin, bmartin@uow.edu.au, phones 02 4221 3763, 02 4228 7860. Address: PO Box U129, Wollongong NSW 2500. Associate editors: Don Eldridge, Kim Sawyer, Isla MacGregor. Thanks to Cynthia Kardell and Patricia Young for proofreading.

Membership

Whistleblowers Australia currently has about 200 members. Feliks Perera, WBA treasurer, said at the annual general meeting that we need more members to maintain our income. Cynthia Kardell, WBA secretary, suggests that after you've assisted someone with a whistleblowing matter, you suggest to them joining WBA as a gesture of support.

On the other hand, WBA's budget is quite healthy, as you can see from the report at the AGM in this issue. The organisation runs on a shoestring. Recently I had a call from an events organiser wanting to tell about the attractions of their services and venues. I said our annual budget was just $5000, and that was enough to convince her that we were an unlikely customer.

What WBA does well is provide advice, information and help in finding useful contacts. We don't need money for this, just time and energy from knowledgeable, committed individuals.

WBA membership is symbolic of supporting the cause of whistleblowing. Sure, you get a subscription to *The Whistle,* but if you're short of cash you can read it on my website.

Personally, what we need most of all is assistance in getting to people before they blow the whistle. All too many of those who contact us have already spoken out and suffered reprisals. Some have lost their jobs and more than a few have had their lives destroyed. If we can prevent just one of these personal catastrophes, it will save more money than WBA's entire budget over the past 15 years. The benefits will be to the potential whistleblower and to society as a whole.

So, if you want to help, talk about whistleblowing to your friends and acquaintances and encourage them to seek advice before acting.

Brian Martin

Whistleblowers Australia membership

Membership of WBA involves an annual fee of $25, payable to Whistleblowers Australia, renewable each June. Membership includes an annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/ discussion groups, plus input into policy and submissions.

If you want to subscribe to *The Whistle* but not join WBA, then the annual subscription fee is $25.

The activities of Whistleblowers Australia depend entirely on voluntary work by members and supporters. We value your ideas, time, expertise and involvement. Whistleblowers Australia is funded almost entirely from membership fees, donations and bequests.

Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone 07 5448 8218, feliksperera@yahoo.com