

“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



Whistleblower John Kiriakou to go to prison — see pages 9–10

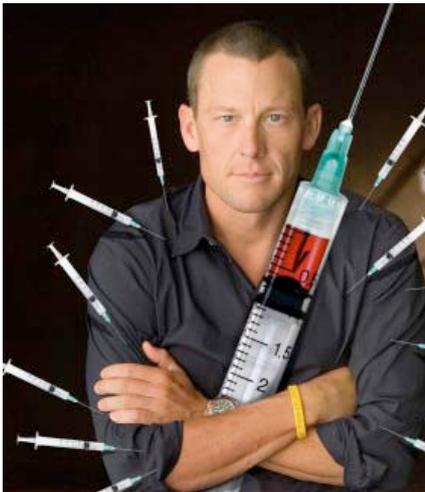
Whistleblower reveals Armstrong threats

Sydney Morning Herald
16 October 2012, p. 18

LONDON: Lance Armstrong has been accused of using intimidation and threats in a desperate bid to stop a whistleblower going public with claims about his alleged drug use.

Armstrong, who maintains his innocence, has been stripped of his seven Tour de France titles by the US Anti-Doping Agency and banned from the sport for life after the organisation claimed he orchestrated the most sophisticated doping program ever seen.

But Betsy Andreu, the wife of Armstrong's former teammate Frankie Andreu, claims to have known the American was doping for 16 years and has had to deal with his attempts to silence her ever since.



"Lance waged a war against me and I fought back quietly and smartly," she told *The Mail on Sunday*. "Every time he said something untrue about me, it just empowered me more. The more he called me a liar, the more I was going to fight. No way was I going to let somebody lie about me."

She was friendly with Armstrong thanks to her husband, who cycled on the same teams at various times between 1992 and 2000.

With her then fiancé, she visited Armstrong as he received treatment for testicular cancer in 1996 and the

American had a conversation with two doctors while she was in the room. According to Betsy, Armstrong admitted then that he had been taking erythropoietin, testosterone, growth hormone, cortisone and steroids to improve his cycling.

David Walsh, a journalist, became aware of that incident via an off-the-record statement from Betsy in 2003 but Armstrong quickly got word that she had revealed his secret.

He responded by starting an intimidation campaign that lasted years.

First he sent Frankie, who briefly used erythropoietin at Armstrong's urging, an email that read: "Helping to bring me down is not going to help y'all's situation. There is a direct link to all our success here, may I suggest you remind her of that."

When Betsy refused to sign a statement in support of Armstrong and discrediting Walsh, the Texan began a media smear campaign.

As rumours of drug use continued to swirl around Armstrong in 2008, Betsy was left a sinister voicemail from a friend and former business associate of Armstrong.

"I hope somebody breaks a baseball bat over your head," it said. "I also hope that one day you have adversity in your life and you have some type of tragedy that will definitely make an impact on you."

Betsy said of Armstrong: "If he wants you to be intimidated, he'll be the bully; if he wants you to believe his lie, he'll charm the hell out of you."

College scandal: police move in

Eamonn Duff
Sydney Morning Herald
10 November 2012, p. 1

POLICE have been called into St John's College at the University of Sydney and a hotel "safe house" organised amid fears for the safety of several students who have spoken out against ritual abuse and widespread destruction on campus.

After a week-long "witch-hunt" by senior students, police have been drafted to investigate violent threats against so-called "moles" and whistleblowers who have been exposing the college's mob rule culture from within.



An honorary professor at the university, Roslyn Arnold, revealed she had advised the college's rector, Michael Bongers, to "put those at risk in alternative accommodation as soon as possible."

Professor Arnold, who quit the St John's executive this semester, said: "There is a witch-hunt taking place to trace all those students who have been brave enough to speak out against the ongoing humiliation and abuse."

"The threats are serious and they are real. The college has a duty of care to protect possible targets from any repercussions."

Fairfax Media can confirm that hotel rooms have been offered to several students who feel they need urgent protection, or are too distressed to remain on campus. It is understood other students will be approached about the situation over the weekend.

In the past 48 hours, fear and paranoia have swept through St John's after rumours that an IT expert was called in by some students to track electronically a stream of messages exchanged with media outlets.

Professor Arnold likened the behaviour to what you would expect to find in a faraway country under a "military dictatorship." "Who do these delinquents think they are? It is hard to believe that it has reached this point — but it has."

The threats were lodged on an iTunes forum regularly used by students. In one exchange about a first-year female student who had spoken

publicly about her “victimisation,” one warned: “Whoever wrote to SMH, you will get what you deserve bitch.”

A female student was later named and accused of being the one responsible, with one vowing to “crucify” her “upside down.” Threats were also made to a Fairfax journalist, with one student stating: “I will look for you, I will find you and I will kill you.”



Last Sunday Fairfax Media reported that Australia’s oldest Catholic college had descended into anarchy, with ritual abuse and widespread vandalism escalating.

A problem-plagued year started in March when a first-year female student was rushed to hospital with a bleeding stomach after being pressured to drink a toxic cocktail containing shampoo, alcohol and dog food. It ended this week with the Catholic Archbishop of Sydney, George Pell, asking the five clerical fellows on St John’s governing body to resign.

The Premier, Barry O’Farrell, then announced plans to examine legislation governing the college, and the university’s vice-chancellor, Michael Spence, expressed a desire for a wider review that would modernise the university’s four religious colleges.

[Subsequently, all other members of the governing body resigned, a new board was appointed and 33 students, originally implicated in the events that led a student to be hospitalised, were barred from the college.]

Grid Australia and the campaign to gag outspoken farmer

Michael West
Sydney Morning Herald
15 November 2012
BusinessDay, p. 4

THE thing that really irks Bruce Robertson is not just that the giant power companies are threatening to sue him but that their lawyers are demanding he pay for their costs.

“It was a service I never requested,” quips Robertson, who has had to resort to black humour since the letter from Grid Australia arrived out of the blue last week.

In the quintessential act of corporate bullying, the nation’s electricity transmission giants are threatening to sue the corporate-analyst-turned-cattle-farmer from the mid-north coast of NSW.

Robertson has been a constant thorn in their side this year, revealing how the industry’s “gold-plating,” rubbery forecasts and rhetoric have been the main factors behind the nose-bleed rise in power bills.

Grid Australia, the peak body for the transmission giants, is trying to muzzle him with legal threats.

This story is not just about power companies gagging an outspoken critic. It is about governments too. Grid Australia’s members are mostly state-owned power companies. They speak for \$10 billion in network assets and they don’t like Robertson accusing them of gold-plating one little bit.

Here’s the catch. Governments are not allowed to sue their citizens (this is a good thing).

Nor are the other two members of Grid: Victoria’s SP-Ausnet, which is controlled by a Singaporean multinational, or South Australia’s transmission provider, ElectraNet, which is a consortium of powerful financiers. Both are too big to sue.

Under reforms to the defamation laws seven years ago, big companies are no longer permitted to sue (Section 9 Defamation Act, 2005). The intention of these reforms was precisely to stop this sort of intimidation by large vested interests. They were designed to prevent large corporations from using the law for commercial purposes — to

shut down bad press, among other things.

So how can Grid Australia get away with its threats to sue Bruce Robertson?

For the past week, *BusinessDay* has made repeated requests of Grid Australia’s law firm, Ashurst, to justify its action on legal and ethical grounds. Requests for an explanation have been ignored. Not even a “no comment” has been forthcoming.

Was Ashurst, one of Australia’s “big six” legal firms, happy for Robertson and his family to lose their farm for the sake of making a fee? No answer.

As governments can’t sue for defamation, and big companies can’t sue either, we can only assume that Ashurst has deemed Grid Australia to be a small “not-for-profit” entity with less than 10 employees.

This highly contestable and technical conclusion might allow them to skirt around the law — the letter of the law that is. Clearly as a front for the power companies, the action shatters the spirit of the law. But Grid Australia’s action rests on shakier ground than black letter law.

It doesn’t even appear to be a legal entity, for a start. And it has to be a legal entity to sue.

According to ASIC searches, Grid Australia is not an incorporated body. Nor does it have a business name. Nor does it seem to be an incorporated association under the Associations Incorporation Act.

The website does not list a board. The contacts for Grid Australia all appear to be Transgrid employees. And the website was registered by a Queensland Electricity Transmission Corporation, not Grid Australia.



Departing from the legal aspects for a moment to deliver a layman’s observation: Grid Australia is as much of a secret society, controlled by state government agencies, as it is a proper

legal entity with a right to sue people for exercising their rights to free speech.

And so we have a front for Transgrid, spending a bundle of taxpayer dollars with a big-city law firm, in an effort to stop a farmer from having his say. And the taxpayers of Victoria and other states are also subsidising this ethically dubious exercise.

Already, Transgrid has spent taxpayer money securing the services of Sue Cato, often regarded as the most expensive crisis management consultant in the market, to assist with its reputational issues. Now it has resorted to lawyers.

BusinessDay has endeavoured for more than a week to contact the Ashurst staff involved in the action. We have also tried the PR department. Despite repeated requests for a response there was none forthcoming.

One man v the system: power industry says sorry

Michael West and Phillip Coorey
Sydney Morning Herald
16 November 2012, p. 1

IN THE morning, Bruce Robertson and his family were facing a lawsuit from six state electricity giants. By early afternoon, they were fielding an apology.

Grid Australia, the peak body representing the nation's \$10 billion transmission industry, had threatened to sue the cattle farmer for defamation.

As an outspoken critic of the power companies, Robertson had exposed their inflated forecasts for electricity demand, and the "gold-plating," or excessive spending, which has been the driving force behind the rise in electricity bills.

After revelations about the lawsuit in the Fairfax press however, an outcry of public support for the farmer from the mid-north coast of NSW forced an embarrassing back-down.

"I'm still confused. One minute I've got a lawsuit on my hands, the next minute I've got an apology. What's going on?" said Robertson.

The chairman of Grid Australia, Peter McIntyre, wrote to Robertson to "sincerely apologise." The threat of

defamation proceedings had been withdrawn, he said, inviting Robertson to meet and discuss the issues.

The defamation threat from law firm Ashurst had lobbed at the Robertson property on November 5, and made a suite of demands including that he pay the costs of the solicitor's letter.

This drastic legal action — which amounted to a cabal of big government and multinational companies suing a citizen for free speech — had been sparked by Robertson's submission to the Senate Inquiry into electricity prices last month. In this, and in the press, he claimed Grid Australia was being dishonest in making out that rising "peak demand" was to blame for rising prices.



Bruce Robertson and family

Robertson argued that peak demand had been falling for three years and should not be exploited by industry as the culprit for rising prices.

The South Australian transmission group ElectraNet said it was not aware of the legal action, Victoria's SP Ausnet said it had become aware of it on Monday and was "happy" an apology had been made. Powerlink-Queensland said little more than it was aware that Grid Australia had "clarified its position."

And the NSW Minister for Resources and Energy, Chris Hartcher, had nothing to say at all. A spokeswoman for Mr Hartcher said he

"supported the need for informed public debate on issues of public interest."

The move by Grid Australia to threaten Mr Robertson was an extremely unusual one legally, as governments are not allowed to sue their citizens for defamation, nor are large companies; Grid Australia is clearly a front for state government transmission companies.

It does not appear either that there was a legal basis for action, even if Grid Australia were deemed to be a small not-for-profit organisation with a right to sue. That's because it doesn't appear to be registered as a legal entity.

Like any "black ops" exercise the facts are taking a while to emerge.

No longer true, just red, white and blue

Julian Assange writes on what he sees as Australia's failure to uphold truth and justice, in favour of the American way.
Herald-Sun, 6 October 2012

FOR over a decade now, governments around the world have been doing all they can to reduce scrutiny over the exercise of their power. Countries like China and Iran are rightly criticised for their attempts to suppress dissenting voices online. But the US, supposedly the land of the free, has a similarly poor track record.

President Obama has been waging a war on whistleblowers from the Oval Office, the most obvious example being the mistreatment of Bradley Manning. The Obama-Biden campaign brags about prosecuting twice as many "national security" disclosures as all previous administrations combined. There have also been sustained attacks on my organisation, WikiLeaks, via a financial blockade of donations, enforced with the support of the US government.

Most disturbingly, WikiLeaks has been warned by the Pentagon not to solicit service members to leak classified information. Military personnel who make contact with WikiLeaks or our supporters could be charged with "communicating with the enemy," a crime that carries a possible death

sentence. The Pentagon has also stated this month that it considers the continued publication by WikiLeaks of classified information belonging to the US government to be an ongoing violation of the law.

This sets a precedent: contact by military whistleblowers to any media organization may soon be treated with similar hostility.

But these attacks are not just directed at whistleblowers and those that publish their information for the public to see. Governments in the UK, the US and Australia are seeking to extend already extreme powers of surveillance so they can gather intelligence on their citizens.

Under proposed changes to national security laws, the Australian government will force Internet service providers to retain the internet and phone records of all Australians for two years. Some agencies are demanding even more extreme powers to keep a full record of citizens' activities indefinitely. Such extremism will in effect be the reality: the proposed laws require the creation of a nation-wide infrastructure that is capable of intercepting all communications.



Julian Assange

Every email, every Facebook post, every tweet, every google search will pass through this database and portions will be stored and could be used against you at some point down the track.

A nation wide mass interception infrastructure is a national security disaster waiting to happen. Of course, the changes to the law promised at the last election to protect whistleblowers have fallen off the legislative agenda.

These are significant expansions of government power without justification and without any checks and balances to ensure that the rights of everyday people are respected. There is no way of knowing how this or future governments will use such power. Australians deserve to know what is being done in their name.

Technology offers us incredible opportunities to share information, spread ideas and collaborate across geographical divides. It has the potential to shine a light on wrong-doing, correct injustice and empower those without a voice. The freedom to use such platforms must be safely defended, lest it become simply a place for the government to spy on its population.

The power given to governments to govern, after all, derives from the mandate given by the people. Technology should be about empowering citizens and giving expression to the inner core of our public and private political lives. This is a prospect that makes the powers that be very uncomfortable.

When an organisation like WikiLeaks shows the emperor with no clothes on, predictably every attempt is made to undermine us. The Prime Minister has never retracted the comment she made about WikiLeaks being based on an illegal act. By her own Governments admission, such an accusation is unsustainable. It is untrue and should be retracted.

The Australian Government has turned its back on one of its citizens, in order to avoid offending the US, and has repeatedly lied about its support for me. Ecuador, after careful and lengthy consideration of the evidence, concluded that I had a well-founded fear of persecution and that I could not rely on my own government to protect me.

It is bitterly disappointing that the country that I love has abandoned my organisation. WikiLeaks is an Australian organisation and an Australian success story and yet the Australian Government has done nothing to defend us. Quite the contrary. It has slandered us in public during a time when we face significant risks.

For me personally, it is difficult and in some cases impossible to see my

family and friends. I have been unable to be with them in recent moments of family grief.

I want nothing more than to do my work in peace. I began my career as someone who understood the importance of exposing corruption and wrong doing. I am now a publisher who faces persecution for doing my job. It is the duty of publishers to fearlessly publish the truth and the duty of all good citizens to defend their right to do so.

It is time for Australia to embrace a different path: to reject campaigns of harassment and intimidation against publishers, journalists and whistleblowers. We must demand that our government abandon efforts to impose a surveillance state on its citizens. We deserve a government that protects its citizens no matter whom they have offended or embarrassed. We have the opportunity to build a democracy that welcomes transparency and the more just, humane and responsive government that it brings.

“Satisfied” whistleblower weighs future in the force

Megan Levy
Sydney Morning Herald
13 November 2012

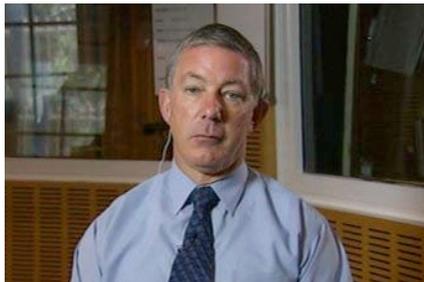
A SENIOR detective who blew the whistle on an alleged police cover-up of sex abuse in the Catholic Church said he had received threatening messages on police letterhead since speaking out on an issue that he acknowledged would end his career in the force.

But after Prime Minister Julia Gillard announced a sweeping royal commission into child sex abuse on Monday, Detective Inspector Peter Fox said he felt vindicated and satisfied that the thousands of voices of abuse victims would finally be heard.

The senior investigator's explosive allegations on *Lateline* last week — that the Catholic Church had covered up crimes of paedophile priests and silenced police investigations in the Newcastle-Hunter area of New South Wales — helped to trigger the royal commission, which will probe organisations ranging from church and state authorities to the Boy Scouts and sports groups.

Detective Inspector Fox said the royal commission was a “wonderful result”. He said the push for the inquiry had affected him and his family, including his wife, who suffered a nervous break-down after receiving threatening letters.

He had also received an anonymous threatening letter with police letterhead from a “disgruntled officer” after speaking out about the church and another controversial issue in the past year.



Peter Fox

A smear campaign had also been launched against him, with rumours circulating in the police force that he was mentally unstable, Detective Inspector Fox said.

“I don’t want to go into it too deeply, but this is the end of my policing career,” Detective Inspector Fox told *Lateline* on Monday night.

“I realised that from the moment that I decided to speak out last week. As much as it’s denied, the culture within the police force would never allow someone like me to move back into it.

“I think the Wood Royal Commission [into police corruption in NSW] uncovered it years ago and I’m sorry to say that very little has changed. You know, ostracisation and things of that nature continue to go on within the police force.

“Don’t get me wrong, I’m not bitter with the police force. They’re a minority, those individuals, but they exist everywhere, whether it’s the police force or wherever else in society they may be. We will probably unfortunately never change that.”

Detective Inspector Fox said the royal commission should examine aspects of the Catholic Church such as confession, in which priests had been known to confess to other priests their abuse of children.

“We need to get laws to stop that happening and to compel those priests that are hearing those confessions to say, ‘Listen; God doesn’t want this man to commit more crimes. He wants me to come and tell the police to stop him’,” Detective Inspector Fox said.

He also hit out at Sydney Archbishop Cardinal George Pell’s claims that the royal commission was brought about by ongoing and at times one-sided media coverage.

“It certainly has been one-sided, because it seems to be the Church that has been continually screaming out the message that ‘We don’t need a royal commission, there’s nothing going on here, move along’,” Detective Inspector Fox said.

“We’ve had enough from that one side, Mr Pell. Now we’re going to start listening to the victims and start listening to their families and we’re going to start doing something about the problem.”

Detective Inspector Fox joined Twitter last week in his campaign for a royal commission.

On Monday night he tweeted: “I will sleep with a smile.”

How can you protect a whistleblower?

Use Twitter

When critics tried to discredit abuse whistleblower Peter Fox, he turned to social media. The anti-Fox campaign didn’t stand a chance, says Suzanne Smith.

ABC, *The Drum*, 16 November 2012

BEFORE I start, an admission. I am not an expert at Twitter — far from it. I only really engaged with the medium about a year ago, and I still have a lot to learn.

But the last week has been an extraordinary revelation to me. Twitter is a powerful weapon to protect whistleblowers like Detective Chief Inspector Peter Fox.

The lead-up to the interview with DCI Peter Fox on *Lateline* was extremely tense. I knew the blowback against him would be vicious. As a reporter, you have a duty to protect these brave people who put their careers and often their personal lives on the line.



Once the interview went to air, you could tell something monumental had happened, just by following Twitter. The mood was poisonous. It wasn’t confected outrage; it was real. Peter Fox had exposed serious allegations of a cover-up and criminality in the Catholic Church and the public were reaching out to him.

I knew a campaign to discredit him would start almost immediately. To circumvent that campaign, I put out this tweet straight after his interview on Thursday evening:

@suzipeep: Media peeps I would be keen to know if you get any briefings discrediting DCI Peter Fox from #Lateline.

This was retweeted. It was a way of signalling to the Twitter community that they had a role in protecting this whistleblower. A very important role.

The word got out. The next thing was to get DCI Peter Fox to join Twitter. His son Aaron signed him up with the Twitter handle @Peter_Fox59. Peter Fox now had a direct way to communicate with hundreds of people, including the country’s senior journalists. He used it to great effect. He told his followers that journalists were telling him that senior police were claiming he was “mentally ill.”

@Peter_Fox59: The police dirt campaign has already started against me circulating rumours I am psych unstable.

Immediately his followers retweeted this tweet. The word had got out that the campaign against Peter Fox had begun.

Every time he heard his critics discredit him, he put it out on his Twitter account. Everyone knew, and he could calmly and rationally dispel

the spin. The anti-Fox campaign didn't stand a chance.

But even more importantly were the "heavy hitters" — key people in the Twitterverse — who are also powerful in politics, the law and business. There was a convergence of people from very different walks of life, from all over the political spectrum, that had decided that Peter Fox was the "tipping point" and that nothing short of a national royal commission would do.



Mark Textor

By the far the most influential, I believe, was @markatextor, pollster and strategist for the Liberal party. His many years in politics were evident in some key tweets. In a brilliant move, he turned the "spin" used by the Catholic Church on its head, laid it bare, and destroyed any chance of that spin working against Peter Fox. Here is a demonstration:

@markatextor: #CatholicChurch Playbook 1) don't bring this up — it just hurts the victims 2) it's all in the past 3) it's an isolated incident 4) look away

@markatextor #CatholicChurch Playbook 5) say accusers are anti catholic 6) bully the victims 7) bully the media 9) call in favours w/ catholic media men

Ironically, anyone watching Cardinal Pell's press conference on Tuesday (November 13) could see Mark Textor's analysis in full view. Cardinal Pell said the media had exaggerated the problem, that the media's coverage

of the stories was hurting the victims. It was the 101 of spin as laid out in Mark Textor's tweet.

Like Mark Textor, there were many other key tweeters during those heady days after the Peter Fox interview on #Lateline. Many of those people are leaders in the community like @toplitigator, @JoshBBornstein, @LindaMottram and many, many more. Key journalists such as @Colvinus and @leighsales made their presence known by introducing Peter Fox to thousands of people via their Twitter accounts. Peter Fox now had thousands of supporters across all spheres of society. It was an avalanche of kindness and good will.

His own followers come from every stratum of society. The cop who grew up in a housing commission estate at Green Valley in western Sydney suddenly had seriously influential and powerful people following him and urging him on.

This phenomenon coincided with a concerted campaign by many victims and supporters outside social media. It was propelled by the public's mood; they had had enough. Josh Bornstein, a prominent Melbourne Lawyer, started, with others, a petition for a national royal commission. The idea went viral and by the end of the day on Monday (November 12), a national royal commission was announced.

There were many other people who played their part; the so-called "mummy bloggers" were very influential. In the beginning of the campaign on Twitter, Mia Freedman tweeted:

@MiaFreedman: "He was abused by a Catholic priest aged 8. This is his story today on Mamamia: <http://bit.ly/QuBENf> @mmia

Throughout the next four days, Mia Freedman kept up the pressure with stories and comments, adding her imprimatur to the rallying cry for a royal commission.

As Senator Nick Xenophon so rightly said, Peter Fox's extraordinary testimony was the "tipping point." The public turned ugly and they wanted change. The Twitterverse played a major role in exposing lies and spin against the key whistleblower, communicating any notion of that to thousands of people.

It was awesome to watch and it gave me hope that whistleblowers, like

Peter Fox, now have even more protection.

No ALP pardon for Kessing in whistleblower case

Chris Merritt
The Australian

9 November 2012, pp. 33–34

THE federal government has rejected a pardon application from convicted whistleblower Allan Kessing — the man Labor praised while in opposition.

Mr Kessing's chief supporter, independent senator Nick Xenophon, said the decision revealed Labor had double standards when it came to protecting whistleblowers in the public service.



Nick Xenophon

"They used him in 2007 as a poster boy for their election campaign, and in 2012 they treat him like a piece of garbage," Senator Xenophon said.

The government's decision comes five years after the Labor Party's policy for the 2007 election said Mr Kessing had made Australia safer after he was convicted of leaking long-ignored reports on criminality and lax security at Sydney airport.

That policy had cited the conviction of Mr Kessing as an example of the "inadequate" protection for whistle-

blowers that would be corrected by a Labor government.

“Currently, federal laws allow only very few protections for whistleblowers in very limited circumstances — and even then the protection that is offered is inadequate,” Labor’s policy says.

“The prosecution of Alan [sic] Kessing — for disclosing a report detailing security failings at Sydney airport — is a case in point.

“Although Mr Kessing’s actions ultimately made Australia safer, he was nevertheless prosecuted and ultimately convicted.”

Justice Minister Jason Clare informed Mr Kessing by letter that his pardon application had failed.

“Having regard to all the relevant information and based on the advice of the Attorney-General’s Department, I have decided not to recommend that the Governor-General grant you a pardon,” Mr Clare wrote.

The rejection, dated September 27, is a response to an application that was sent to the government on October 1, 2009.

It has come to light one week after Labor’s long-delayed bill to improve whistleblower protection was preempted by independent MP Andrew Wilkie.

If enacted, the Wilkie bill would have the effect of partly repealing the law that was used against Mr Kessing — section 70 of the Commonwealth Crimes Act. At the time, Mr Wilkie said the test for any whistleblower law was whether it would have protected Mr Kessing.

“This passes the Allan Kessing test,” Mr Wilkie said.

Mr Kessing, a former Customs officer, had been convicted in May 2007 of leaking airport security reports to this newspaper — a charge he continues to deny.

But after that year’s federal election, he revealed he had provided the material to a staff member working for Anthony Albanese, who was Labor’s transport spokesman when in opposition.

Mr Clare’s letter to Mr Kessing says the involvement of Mr Albanese’s office, if proved, would not establish Mr Kessing’s innocence.

But because he did not reveal the link with Mr Albanese at his trial Mr

Clare had been advised that “as a matter of public policy, it is not appropriate for the royal prerogative of mercy to be exercised to pardon a person who seeks to raise a doubt about his or her conviction by raising matters that were deliberately not raised, and tested, by them at trial”.



Mr Kessing’s assertion that he was innocent of the charge of which he had been convicted meant “the claim that the leaking of the reports was in the public interest is irrelevant to a consideration of your moral or technical innocence of the offence”.

Mr Clare also wrote that he had been advised “that there was no internal [Australian Customs Service] investigation into the alleged leak of information to journalists prior to the referral of the matter to the AFP by way of the letter dated June 1, 2005.”

“Accordingly, the defence were not denied access to information which may have been gathered by an ACS investigation because there had not been an investigation,” Mr Clare wrote.

The June 1 letter from Customs was not provided to Mr Kessing’s defence lawyers. Its existence was not known until it was provided to Mr Kessing after the trial by a source inside the AFP.

The letter refers to *The Australian’s* article of May 31 about the airport security reports and then refers to “subsequent inquiries by Customs”.

The letter, signed by Customs internal affairs manager Geoff Lanham, outlines the results of those inquiries.

It concludes by saying, “it would appear from the circumstances that at least two Customs officers who had knowledge of the two reports in question had unlawfully provided information” to *The Australian’s* reporters Martin Chulov and Jonathan Porter.

Mr Clare’s letter says he has been advised by the Commonwealth Director of Public Prosecutions that Mr Kessing’s lawyers were supplied with the primary material on which the summary in the letter was based.

Mr Kessing’s barrister, Peter Lowe, had written to Mr Clare saying he would have sought to cross-examine Mr Lanham.

However, Mr Clare wrote that his advice was that cross examination of Mr Lanham “would only have elicited that he had not conducted an investigation himself nor had anybody else in the ACS and that the contents of his letter were based on the documents which the defence already had”.

Mr Clare also wrote that he had been advised that Mr Kessing “chose not to utilise the whistleblower policy in place in the [Australian Customs Service] in 2005 to raise any concerns you may have had about the report”.

After receiving Mr Clare’s letter, Mr Kessing said the assertion that Customs had a whistleblower policy in 2005 needed to be explained. “As far as I know there was none — which is why they said they were going to do something about it” in Labor’s pre-election policy, Mr Kessing said.

He now believed Labor’s promise to improve protection for public sector whistleblowers “was entirely a PR exercise.”

“It sounded good but whether they ever had any intention of doing something I cannot say, but on the evidence so far I would say it was never more than window-dressing,” he said.

“If they were serious in 2007 [about the need for whistleblower reform] and the legislative timetable got the better of them, why didn’t they leap at the chance offered by the request for a pardon.

“If their heart were in it, they could have done the honourable and ethical thing.”

Mr Clare told Mr Kessing it was possible to have his conviction reviewed by the NSW Supreme Court.

A spokesman for Mr Clare said Mr Kessing’s case had been independently assessed through the judicial process.

“The Attorney-General’s Department undertook a thorough analysis of Mr Kessing’s pardon application and advised not to recommend that the

Governor-General grant Mr Kessing a pardon,” the spokesman said.

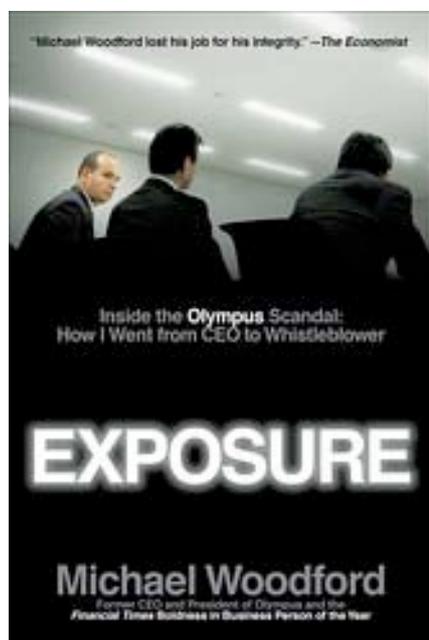
“This decision is based upon careful consideration of material provided including independent legal advice from an experienced senior criminal law practitioner.”

Seven secrets every whistleblower needs to know

Michael Woodford

<http://wsj.com>, 4 December 2012

I WAS president and CEO of Olympus Corporation when the financial scandal broke last year, after I had exposed a massive fraud of approaching \$2 billion which has subsequently become known as Japan’s Enron. Less than a month after I had been forced to leave the company, Olympus’s share price had dropped by a staggering 81.5% compared to the day before my dismissal. In monetary terms this represented a fall in market value of over \$7 billion, and in witnessing the meltdown of this iconic Nikkei listed company the business world was aghast.



My new book, *Exposure: Inside the Olympus Scandal: How I Went From CEO to Whistleblower*, details this dark experience. It is very personal to me that the lessons from what happened in those difficult months of

last year are shared as widely as possible.

My new life is now going around the world preaching about corporate governance and what can be learned from the Olympus scandal. This month, Harvard published a case study on the Olympus scandal and my role in it as a protagonist — this will be used to elucidate, for future MBA students, just what happens when accountability and governance controls break down completely.



Michael Woodford

I care passionately about the truth, and by sharing what happened to me, I hope it will make the business world a little more open and encourage individuals that if they see wrongdoing, they should challenge it.

For anyone who finds themselves in such a position there are seven critical steps which I believe if followed are more likely to lead to a successful outcome:

1. Take your time to collect as many facts as you can and be as forensic in the process as you can — in making any allegations, the key issue will be evidence.

2. Ensure that you obtain legal advice albeit from a family solicitor, and ensure they have a dossier of all the material you assemble.

3. When you have sufficient evidence, in the U.S. formally report any suspected wrongdoing to the state or federal authorities, and consider doing likewise in other jurisdictions. This action will ensure, for example in the US and UK, that you are protected by statutory whistleblower protection.

4. Depending on the jurisdiction in which you find yourself, you may not fully trust the authorities and the only alternative is to find a journalist(s) whom you can trust. It is a rule that, if requested, a journalist will protect their source. Furthermore, sometimes the investigative ability of media organi-

zations can compare with, and in some circumstances be superior to law-enforcement or regulatory agencies. Respected media outlets won’t understandably publish or broadcast anything without some evidence, but the press are very much your friend and often it is only the bright light of publicity which ensures wrongdoing is eventually exposed.

5. Becoming a whistleblower inevitably means you will be on your own, and prepare yourself psychologically for this. Colleagues you considered friends will often distance themselves from you but don’t let this affect your resolve. If you think you are right and have the evidence then you are doing nothing wrong — quite the reverse.

6. Your family will be put under extreme emotional strain and this is painful to witness, but you must remain focused and determined — remember if you know of wrongdoing and then don’t report it, you become complicit and put yourself and your family at risk.

7. Never lose sight of your own moral compass — you will receive a lot of opinions but ultimately trust your own judgement as in the end most of us know what is right and wrong.

Please help defend John Kiriakou

<http://www.defendjohnk.com/>

Dear friends and colleagues

We write to ask you to join us in supporting, protecting and materially helping our friend and colleague, John Kiriakou, a long-time former CIA official and case officer. Incredibly, John has been accused by the Department of Justice of crimes under the 1917 Espionage Act, a charge historically reserved for persons who betrayed their country to foreign governments for money.

Why? The prosecutors have not claimed that John talked to any foreign government, passed any government documents or accepted funds from anyone hostile to the United States. Instead, according to the facts asserted in the indictment, he committed the “crime” of responding honestly to a query from the *New York Times* related to the agency’s interrogation program

under the Bush Administration, which included waterboarding.

The Justice Department's actions have created huge pressures on John and his family. John and Heather have five children — the youngest less than a year old — and face the challenge of raising them while simultaneously fighting the people at the CIA, FBI and Justice Department who are determined to send John to prison.

Friends of John Kiriakou

Update from John Kiriakou

Last month [October 2012] I decided to plead guilty to one count of violating the Intelligence Identities Protection Act in exchange for the government dropping all other charges against me. The decision to plead guilty was the most difficult decision of my life. I am glad to now have the certainty of being home with my children in 30 months. Thank you for your support at this difficult time for me and for my family. I wish I could thank each and every one of you individually, as your support has meant the world to me. Knowing I had supporters like you saved me at the most difficult times.

What is water-boarding?

Water-boarding is a harsh interrogation method that simulates drowning and near death; origins traced to the Spanish Inquisition.



In a sane society, such whistleblowing would receive a hero's welcome, and the people involved in torture would be in jail. President Obama has said that waterboarding is torture, as has Attorney General Eric Holder, who runs the Department of Justice. Given that, combined with Obama's repeated insistence that his administration must encourage whistleblowing, you would think that the administration, led by the DOJ, would celebrate a CIA agent who exposes such practices, and seek to punish those who carried them out.



John Kiriakou

Instead, we have the reverse. This morning, Kiriakou pled guilty, though to a much lesser charge — that of “revealing an undercover operative's identity.” Similar to the Drake case, they found narrow grounds for a guilty plea. The plea document and the associated “statement of facts” are embedded below for your horror [see the website for this material]. They tell ... uh ... a very one-sided view of the story, leaving out all the pesky little details about torture. Kiriakou was more or less forced into taking the deal after a judge had ridiculously ruled that you didn't have to intend to harm the US to be guilty under the Espionage Act. How is it possibly espionage

against a country if you don't intend to harm that country?

The whole proceeding (and all of these other cases) have seriously called into question the Obama administration's supposed support of whistleblowers. It's clear that was a horrible joke played on the public when Obama insisted he wanted to encourage whistleblowing. Before these latest events, Bloomberg had an absolutely scathing story and editorial about the administration's abuse of power under the Espionage Act to beat down any whistleblowers.

As the Government Accountability Project (GAP) notes, the tragedy in all of this is that Kiriakou goes to jail, while the actual torturer remains free. They note that this plea lets the case be over, and makes sure that Kiriakou will be out of jail in 2.5 years — and will get to see his children grow up. But the whole claim of “outing” is ridiculous.

“Outing” is in quotes because the charge is not that Kiriakou's actions resulted in a public disclosure of the name, but that through a Kevin Bacon-style chain of causation, GITMO [Guantanamo Bay] torture victims learned the name of one of their possible torturers. Regardless, how does outing a torturer hurt the national security of the US? It's like arguing that outing a Nazi guarding a concentration camp would hurt the national security of Germany.

They further note that the CIA agent “outed,” Thomas Fletcher, was widely known to reporters well before Kiriakou mentioned his name to reporters. As GAP notes:

An effectively-forced plea from John Kiriakou will be the tragic bookend to the torture narrative: Kiriakou will be going to jail, while Fletcher happily enjoys retirement in Vienna, Virginia, safe with protection from “the most transparent administration in history.”

Shameful.

CIA torture whistleblower railroaded into reduced guilty plea

Mike Masnick, *Techdirt*
23 October 2012

Back in April, we wrote about how the Obama administration, for the astounding sixth time, had used the Espionage Act — which is supposed to be used against spies — to bring criminal charges against a former government employee-turned-whistleblower. All other presidents prior to Obama *put together* had used the Espionage Act in this manner three times. Yes, the Obama administration has *doubled* all previous such uses. Last year, lots of attention was paid to the case of Thomas Drake, which ended in a weak plea bargain, after much of the government's case fell apart. This year, the attention was on this latest case, against former CIA agent, John Kiriakou, who blew the whistle on how the CIA tortured people via waterboarding.

WBA conference

WBA's annual conference was held at the Uniting Centre, North Parramatta, Sydney on 24 November 2012. There were eight speakers. Some of them provided text of their talks, given below. For some of the others, Brian Martin took notes.

9.00–9.15

Welcome, Cynthia Kardell, president, Whistleblowers Australia

9.15–9.55

Margaret Love, teacher, academic & whistleblower
Topic: The ETC, nepotism and fraud

9.55–10.35

Kathy Flynn, researcher & writer
Topic: Leaking, an alternative

10.35–11.05 MORNING TEA

11.05–11.45

Allan Asher, former Commonwealth Ombudsman
Topic: Effective measures to counter corruption

11.45–12.25

Senator Christine Milne, Leader of the Greens.
Topic: Greens' policies for reform.

12.25–1.45 LUNCH

1.45–2.25

Allan Kessing, convicted whistleblower
Topic: Pardons and party politics

2.25–3.05

Wendy Bacon, academic & social commentator
Topic: Obligations in journalism

3.05–3.35 AFTERNOON TEA

3.35–4.15

Leigh Dayton, writer and broadcaster
Topic: Mayhem in the media

4.15–4.50

Gregor Urbas, academic and writer
Topic: how a false claims act might work.

Margaret Love told about her experiences as a whistleblower at the University of New South Wales. For more information, see Derek Maitland's article in *The Whistle*, January 2004.

Leaking, an alternative

Kathy Flynn

In a democracy people need access to information on political, social and economic issues in order to judge whether their elected officials are acting in the public interest. However, too often their elected officials evade such scrutiny and fraud and abuse go unchecked. Most people with access to relevant information are deterred from leaking or whistleblowing due to legislative prohibitions. For example, in Australia Part VII of the Crimes Act (1914) restricts Commonwealth public servants from revealing confidential information. And as the Obeid case demonstrates defamation action was used effectively to silence critics.

Deciding to disclose corrupt behaviour

In spite of this prohibition some people who come across what they believe to be corrupt and illegal conduct in the workplace may take it upon themselves to release relevant confidential information. This is done either through an open disclosure, where the identity of the whistleblower is publicly known, or an unauthorised disclosure where the identity of the leaker is not revealed. This information is typically leaked to journalists and less frequently to activists who may be able to seek redress. Leaking is an alternative to whistleblowing and carries fewer risks of reprisals but leakers need to be alert to pitfalls with this practice.



The distinction of between whistleblowing and leaking

To draw a distinction between whistleblowing and leaking — whistleblowers are overt in their disclosure of organi-

sational deviance, but there is a price. Bureaucracies now know where their opposition is coming from, and can isolate the whistleblowers by discrediting them, not giving them access to further information and suspending them from work. Generally leakers don't suffer these reprisals.

The usual fate of whistleblowers

Before I talk about "leaking" I'd like to make a few comments about whistleblowing. Whistleblowers usually suffer reprisals for their whistleblowing activity; they can be ostracised in the workplace, be demoted from their position or lose their job.

Whistleblowing does not always have a bad outcome

But this fate doesn't happen to all whistleblowers. Some people have blown the whistle safely whilst in employment, or having left the job or while in retirement.

Some find that their grievance about workplace waste, corruption, fraud or bullying is listened to by managers and appropriate action is taken. In one example, a person I know of, who was being harassed in the workplace, went to her human resources department with her complaint and suitable action was taken. She did not have to leave her place of employment and left at the completion of her contract. In another case a whistleblower reported the use of drugs in sport. The agency, the Australian Institute of Sport, did not act and she went to *4 Corners* with the story, the program went to air and she suffered no reprisals. But she had left her employment at the Australian Institute of Sport at the time the program went to air. In one example of whistleblowing that I came across recently was a former Commonwealth Auditor-General who in retirement wrote a series of academic journal articles on the limitations of the Australian National Audit Office to fulfil its function. In these articles he discussed the problem of the failure of government departments to implement the recommendations of the Audit Office — recommendations that the departments had agreed to carry out. During his employment as Auditor

General he was not in a position to be so outspoken.

Having said that the fate of whistle-blowers is usually dismal.

The two types of leakers

The definition of leaking is blurred; it can mean an unauthorised source giving information to a journalist but it can also mean an authorised source with political power and high status using the media to their advantage with little likelihood of being prosecuted. In both instances leakers are covert in their disclosure of information. The types of leaker discussed here are workers in the public sector who without authorisation convey official information to recipients outside of government. It is usually released to the media in the public interest and these leakers lack positions of high status and power. The information they provide to journalists has not been processed by official channels and there is an undertaking by the journalist that the identity of the source will not be revealed. This practice provides some measure of protection to the leaker. Journalists are the usual recipients of leaked information but on occasions information is leaked to activists who can act as a spur to additional media coverage of the story. There can be a range of motives for leaking, not all of them altruistic. Some leaks are vexatious in nature and not in the public interest. The protection for journalists lies in checking the information with many sources and gauging their reliability.

Where does leaking come from?

Leaks can come from a range of organisations; they may be governments, not-for-profit groups, corporations, environmental groups, trade unions as well as churches. But here I'll focus on leaks from governments.

The public interest

Not surprisingly governments and unions will not protect leakers if they are caught even when they are acting in the public interest. But there are divergent meanings of the phrase "the public interest." Journalists and leakers define it as information that brings accountability and transparency to government and exposes maladministration or corruption. Governments

argue that they are the interpreters of the public interest and that public servants are bound by rules of confidentiality and are not free to speak out on corruption. As Peter Shergold, Secretary of the Department of Prime Minister and Cabinet in the Australian government explained, leaking by public servants is "not just a criminal offence but also democratic sabotage."

The practice of leaking

One of the difficulties for a public servant who sees evidence of what they perceive is an organisation's corrupt practice, and believes that neither management nor parliament will do anything about the problem, is deciding what to do next. They may be influenced by the rhetoric of senior bureaucrats who assert that leaking undermines the trust between the executive and the public service. This might seem a compelling argument except it hides the need for information in a democracy to be freely available so there is effective decision-making by government.

Revealing problems while remaining anonymous has important advantages: it reduces the risk of reprisals and allows the leaker to remain in the job and continue to collect and reveal further information.



But leaking does require knowledge and skills, including how to remain anonymous, how to choose recipients for disclosures and how to communicate information.

- If a leaker decides to speak to a journalist, they must first decide which media outlet is most suitable for publicising the story, taking into account whether it is a national or local outlet and the outlet's editorial policy on the issue. In selecting a reporter it's recommended to approach one who's

experienced and has a reputation for maintaining confidentiality.

- Leakers need to understand the importance of the timing of the release of documents. Many leakers do not understand timing. And journalists for their part do not understand issues. So some explanation needs to be given to the journalist of the issues contained in documents. A lot of leakers are experts in their subject but poor at explaining the issue with clarity.

- A leaker needs to be armed with documents in order to be believed by a journalist, unless he or she is an experienced and reliable source.

- In addition, it is best to brief the journalist with a clear one-page summary of the key issues of the case.

The biggest problem with passing documents across to the media is that photocopiers tend to leave a signature on the copied document, which could be dust or the electronic idiosyncrasies of the machine. So the best way to photocopy documents is to use a photocopier in an offsite facility, for example, in a newsagency, library or internet cafe. When the journalist receives the document request him or her to re-photocopy the document and shred the document they had received (which is not the original). It is best to avoid using departmental photocopiers, fax machines, computers, email or telephones.

- If the leaker writes up an account of things that have been happening, it's unwise to do it on a work computer. The boss, or computer specialists hired by the boss, might go into the computer and access the files. It is advisable to avoid using a work computer for emails about leaked documents either: they can be accessed.

- It is best for the leaker to use a phone or computer on a once-only basis. They buy a device at a shop where no one knows them and pay in cash, so there's no electronic record tying them to the purchase. The leaker uses the device for calls or emails or whatever — and then throws it out, far from home, with no fingerprints.

- The print media are preferable to television as print is better able to ensure the leaker's anonymity. Television productions quite often need

shadow outs or use distorted voice — and the original voice sometimes can be reconstructed. Television and radio will often do stories inspired by a print story.

- Some leakers, including WikiLeaks founder Julian Assange, believe that leaking is best undertaken by one person working alone who maintains confidentiality. Others derive safety from working in a group, with information being streamed through a designated spokesperson. In this way the journalist knows the identity of only one of the leakers. Some believe that with group involvement the security of the operation is compromised as someone in the group may drop their guard and talk openly about the leaked information.

- Leaking is unpopular with managers for it is embarrassing and can highlight workplace incompetence, inefficiency and secrecy. The leaker is left in a strong position as their identity is hard to uncover and they may be able to stay in the job and leak further information at some stage in the future.

- Reactions by staff members to leaks can be to find the source of the leak and pass further additional information to this source so it gets into the public arena.

- If leakers are caught it can result in the same reprisals that whistleblowers are subject to — demotion or loss of employment and in fact, to find the leakers, managers may resort to targeting innocent people and attributing the leak to them. This can have the desired effect of making the leaker come forward with an admission of guilt.

- There are risks in leaking. The identity of the leaker may be disclosed during the course of a parliamentary inquiry or by accidental disclosure, for example, when a document is passed to a journalist by fax machine.

- On the positive side leaking can influence government policy because it can result in some aspects of public policy being examined more thoroughly than they would in an environment where policy is not subject to such scrutiny.

Is leaking for the fainthearted?

No. It's good to have a poker face for when managers try to find the source of the leak.

When leaking is not suitable

If the leaker has already spoken out, it's too late to be anonymous.

If the leaker is easily identifiable, then trying to be anonymous may be futile. Maybe the leaker is the only person, aside from the boss, with access to particular documents or information. It could be that the key documents are compiled and written by the leaker.

Sometimes it isn't necessary to be a leaker. It may be best to be a whistleblower especially if the informant has resigned, found another job, written journal articles or a book.

Big leaks and WikiLeaks

Back in 1971, Daniel Ellsberg, an employee of the Rand Corporation, leaked a 7,000 page set of documents called the Pentagon Papers to *The New York Times*. These papers proved that the Johnson administration had lied about the government's involvement in the Vietnam War. There were long legal delays before *The Times* started to publish the documents. In the end the Supreme Court ruled that the documents could be published. Today when asked whether he would have used this approach Ellsberg replied that to avoid legal delays he would scan the documents and put them on the internet. Julian Assange argued that for someone in Ellsberg's position it would be better to go to a mainstream outlet to get maximum publicity but use WikiLeaks for the storage of the documents. This has the advantage, Assange told *The New York Times*, that the material can be verified in the same way that an academic paper can be verified.

Much has changed since the inception of newspaper investigative journalism. In 2006 WikiLeaks was developed as a safe house for newsworthy leaks which are of political, historic or ethical significance. The site is located on servers in Sweden, Belgium and the United States. It maintains its own servers, keeps no logs and uses military grade encryption to protect sources and other confidential information. To date they have not released a misattributed document.

The website has had significant successes. These include the release of the Afghan War Logs, the Iraqi War

Logs and US embassy diplomatic cables. The mainstream media picked up these stories on WikiLeaks and the level of publicity, which ensued, encouraged other leaking activists to send material to this site. The retaliatory action taken by the US government was to imprison alleged leaker Bradley Manning.

Conclusion

In spite of inexperience or a lack of professionalism in handling the media, unauthorised leakers have worked to a variety of goals and been successful. For some it is getting information into the public arena. For others it is to expose government policy to wider and more rigorous community debate. Some want to drive a wedge between the executive and the parliament by suggesting to politicians that they are not being well briefed by senior officers of their departments through the omission or cover-up of information. Others are interested in setting in train some form of parliamentary inquiry into organisational malfeasance. For others it is to achieve more substantial social or political reform than any inquiry can achieve.

Effective measures to counter corruption

Allan Asher

[notes by Brian Martin]

Cynthia gave an introduction, telling about Allan's roles in consumer advocacy over many years, and his commitment, as Commonwealth Ombudsman, to dealing with the plight of asylum seekers.

Whistleblowers Australia exists because of a "democratic deficit" in Australia: decisions are made by government that are not accountable through parliamentary or formal review systems (such as ombudsmen) or the media. The complexity of government means that ministerial responsibility is absent, and even when ministers could take responsibility, they don't. Consumer advocacy has parallels with democratic advocacy: access to information is vital.

There are a couple of processes that can improve the situation. Freedom of

Information is useful, but on its own doesn't go far enough. People need to be able to obtain information, especially government information.

It's possible to learn some things from the US Constitution, for example the principle of checks and balances among the executive, legislature and courts. The writers of the Constitution were suspicious of government, and some of that suspicion persists today in pushes for open government and opportunities for citizens to take legal action.

An Australian equivalent is the Trade Practices Act, which prohibits misleading and deceptive practices, in which — and this is the key — anyone can make a complaint: there are no legislative restrictions on "standing."

More typical is the fate of Commonwealth whistleblower legislation, which was promised by 2010 but still there is no bill before parliament. The Dreyfus committee, back in 2008, received departmental submissions all oriented to watering down protection, with the result that weak legislation would be worse than nothing. It would be better if the draft legislation disappeared until there is a minister who actually cares.

The parallel is FOI. When it was originally passed, it had so many restrictions and high costs that it was well-nigh useless. But when FOI supporters complained, they were told, "Well, we've passed the law." The existence of the FOI legislation was used to dampen efforts to improve the situation.

The mass media are now involved in ideological wars — for example the Murdoch press in relation to climate change — with the consequence that there is inadequate probing of claims and counter-claims on issues. Political partisanship by the media means that issues are not examined in the sort of way that aids the public interest. The problem could be seen in the US at the beginning of the global financial crisis, in which the media were more interested in questions of regulation than culpability.

The usual three arms of government are the legislature, executive (ministers) and judiciary. The fourth arm is the regulatory agencies such as the auditor-general. The ombudsman can

be seen in this context, as I did when I was Commonwealth Ombudsman.



Allan Asher

The absence of any central agency at the Commonwealth level to deal with or even just report on matters of corruption is a fatal flaw. The Commonwealth is increasingly involved in programme delivery, such as the school chaplaincy and insulation programmes, but is resolved not to involve any agency in collecting information. The only prospect of reform is at the beginning of a government's term, when they have zeal — and can blame problems on the previous government.

The new ACT whistleblower law is a valuable template for a Commonwealth bill. My biggest fear is the passing of a weak whistleblower bill at the Commonwealth level, in which case persecution of whistleblowers is likely to continue.

Question Should the press be encouraged to tell good stories about asylum seekers, in which Australian citizens assist refugees?

AA Media are not likely to be very helpful. But social media (Twitter, Facebook, etc.) can be highly productive. Young people are quite responsive, and willing to engage with the facts of the matter. I despair with the present federal parliament's lack of courage concerning human rights, aside from a few voices such as the Greens.

Question (Greg McMahon) I'm concerned about the lack of accountability

of watchdog bodies. The Whistling While They Work study assumed good will by agencies that participated in the study. How can watchdog bodies be made accountable?

AA Rules should allow people the option of going to watchdog bodies or to the media, although this has limits given the weakness of the mass media. Too much of the focus is on individual corruption, like members of the police, rather than on systemic corruption, which is why watchdog bodies are not enough on their own.

Greens' policies for reform

Senator Christine Milne
Leader of the Australian Greens

The Greens' political philosophy is about empowering people to take a stand to do what is right and make a positive and lasting contribution to society. This is exactly what whistleblowers do, and the Greens unequivocally support their protection under law.

The Greens want a comprehensive whistleblower scheme that gives confidence to those who are considering disclosing maladministration and corruption that they will be legally protected if they do come forward.

We want a whistleblower scheme that assures people that *they* will not be the focus of investigation, but rather their allegations will be. The Greens believe a scheme that encourages a culture of proactive disclosure, which (much like Freedom of Information law) cannot be guaranteed by legislation alone but entrenched by the leadership and support of senior staff.

I support the protection and empowering of whistleblowers not only on principles of public policy, but also through my own personal experience of assisting whistleblowers and seeing what benefits they have brought and will continue to bring to our society.

The case of Alwyn Johnson and the Tasmanian Bank is instructive. His identity was revealed to the head of the bank and he immediately lost his job. Later, his concerns were completely vindicated. His actions saved 700 jobs and prevented the bank from collapsing into disaster as the state banks in

South Australia and Victoria had just done.

Tasmania could never have sold the bank in 1998 for a \$134 million profit if he had not made his public interest disclosure. His circumstances encouraged the Liberals (in opposition) to establish the Senate Inquiry that first recommended comprehensive whistleblowing laws in 1994.

Why whistleblowing and integrity bodies are both essential

Of all the integrity measures available in a democracy, no two methods are better at shining a light in the darkest of places than the whistleblower combined with an independent commission to investigate and reveal corruption.

One often follows the other. Turn your mind back to Col Dillon who caused the Fitzgerald Commission, or Deborah Locke and the Wood Commission (into NSW Police); and we just witnessed another example ten days ago when Detective Chief Inspector Peter Fox broke traditional investigative protocol and went public on the information he had collected on sex-abuse in the Catholic Church, just up the Pacific Highway in Maitland.

While his circumstances were different to the usual whistleblower's situation because the public was willing and ready to move quickly on the issue, make no mistake, Mr Fox was the catalyst that finally generated the public momentum for a national Royal Commission that members of parliament could no longer ignore.

While Royal Commissions are purpose built to meet certain objectives, what the federal government needs is a permanent, standing commission to investigate corruption on an ongoing basis. With South Australia and Victoria in the final throes of establishing their commissions, the Commonwealth will soon be the only jurisdiction without such a body and the jurisdiction with the weakest whistleblower protection.

That is why we again reiterate the need for the Parliament to immediately enact a comprehensive whistleblower scheme and complement it by supporting the Greens bill, currently before both Houses of Parliament that will establish a National Integrity Commission.

The Greens want an anti-corruption body to oversee both public officials and Commonwealth agencies — a commission which will be an independent statutory agency to investigate and prevent misconduct and corruption in all Commonwealth agencies, and among federal parliamentarians and their staff. It would also cover investigating and preventing corruption in the Australian Federal Police and the Australian Crime Commission.

Our National Integrity Commission bill would also establish an independent parliamentary adviser to provide written advice to MPs on standards, codes of conduct, entitlements, potential conflicts of interests and ethical issues. The Integrity Commissioner would have extensive investigative and coercive powers for hearings and witness.

Our integrity commissioner and comprehensive whistleblower protection work hand-in-hand because the whistleblower's revelations need an independent forum to delve into the details and publicise the results.



Christine Milne

The current politics

It is also worthwhile briefly explaining the politics currently surrounding whistleblower protection. A general rule is that when there is bi-partisan agreement between the two major parties on the status-quo, then nothing will ever be done about it.

Established interests, be they the Labor Party, the Coalition and those who stand to benefit from the current order of things, do not like comprehensive whistleblower protection laws because they are the ones most likely to be tarnished from public interest disclosures.

It follows that both the federal government and the opposition are scared of a truly comprehensive regime to protect whistleblowers.

Their platitudes say one thing and their actions another.

The government has pushed this off for so long that we have decided to start applying pressure on them.

On Thursday (22 November 2012) I moved a motion in the Senate that called on the Government to fulfil its 2007 election commitment to the Australian people by introducing a public interest disclosure bill in the first sitting week of 2013 to comprehensively protect whistleblowers. The motion passed on the voices and we look forward to the Government complying with this resolution of the Senate.

Furthermore, last month in the Senate I moved a motion to force the government to produce their legislation as well as all the feedback they have received on the draft bill from government agencies. This would expose those agencies that loathe the proposal and have stalled it. Both the government and the opposition voted against the motion, so we will never know what the public service thinks about it, and how much they succeeded in watering it down.

One thing we can be sure of is that when the government's bill finally arrives, it will not be Australia's best practice legislation and will fall far short of the ACT's legislation which was introduced because of the Greens. The ACT Greens also successfully amended it before its passage to improve its functionality.

Based on the government's response to the 2009 Dreyfus Committee report, they do not want it to cover MP's staff, or for disclosures to be protected as a workplace right; they also do not want disclosures to third parties, such as journalists, unions or professional associations such as Whistleblowers Australia. This will have the practical effect of gagging a whistleblower who has gotten no results through their internal agency review and it will also provide an incentive for an agency to do nothing about a complaint.

Neither party has declared their support for the Greens bill to establish a National Integrity Commission, but neither party has declared their opposition to it either — so expressing your support for our bill to your local MP might assist its passage.

Our proposed amendments in light of Government inaction

1. Public sector

I would like to announce here that the Greens have amendments ready to fix the inadequate provisions in the *Public Service Act* when the bill comes before the Senate. We would prefer the government overhaul these provisions with blanket legislation, but the indications are that they intend to keep them. Those employed under the *Public Service Act 1999* can only report breaches of the Code of Conduct, and even if they do, there is no legal immunity. They can be pursued in a criminal or civil court for their disclosures and those who no longer work in the Australian public service cannot make disclosures. The Greens intend to remedy all of these flaws.

2. Private sector

We also know that neither of the major parties (or independent parliamentarian Andrew Wilkie for that matter) are willing to talk about improving private sector protections, but the Greens are. We have amendments ready to move next week to the *Fair Work Act* which covers 80% of public and private sector employees in Australia. The amendments will protect those who make a public interest disclosure from an adverse action taken against them by their employer, fellow employees or contractors. We intend to make whistleblowing a workplace right under our industrial relations legislation.

The Greens are also committed to improving the inadequate single clause in the *Corporations Act* so that employees, agents and contractors with the private sector will be able to make protected disclosures. Following the collapse of Enron in the US, their Congress enacted the Sarbanes-Oxley Act to protect whistleblowers in the private sector. Due to the depth and breadth of the provisions, it resulted in a dramatic increase in whistleblowing activity. We should do the same here.

Example 1: It was just reported this week that Twiggy Forrest's Fortescue Metals Group commissioned archaeologist firms to inspect the cultural artefacts and connections of the Traditional Owners in the Pilbara. When Fortescue didn't like the results, they

ordered sections be taken out and they withheld payment until they did. This scourge affects environmental assessments and native title applications too. One firm wrote to the West Australian Department after they made the requested changes, the other refused and had to forego \$70,000. In the private sector, whistleblowing protections should extend to contractual rights to payment as well as subsequent adverse treatment against contractors if they make a protected disclosure.

Example 2: The HIH collapse could have been avoided if such proposals were in place. The external actuaries and auditors of HIH relied so heavily on their business that they did nothing when the HIH board refused to heed its recommendations and deferred to the board's authority in fear of upsetting the business relationship and regular work.

In the absence of Government action the Greens will move to ensure public and private sector employees are protected when they speak out against corruption and maladministration.

Conclusion

The Greens stand shoulder to shoulder with whistleblowers.

In this current parliament, we alone have pursued the Reserve Bank of Australia note bribing scandal that would not have happened without those three brave whistleblowers.

We alone have pursued Dave Reid's claim against the Australian Nuclear Science and Technology Organisation. Despite all the smearing and character attacks, he was eventually vindicated after he exposed the poor safety controls at the Lucas Heights nuclear reactor.

We alone have advocated for the civil and political rights of Julian Assange and Wikileaks.

Finally, the Greens successfully amended shield laws that cover whistleblowers and journalists to ensure it protects citizen-journalists, bloggers and independent media.

But this is not enough.

Corruption protects itself and does not need any assistance, but every month that passes without a comprehensive whistleblower law and a National Integrity Commission, the

Parliament through its failure to act is actually helping to protect corruption and maladministration.

We, as a national parliament, and with your assistance must implement both these changes early next year.

Thank you.

Question (Greg McMahon) In Queensland, the Ombudsman and Crime and Misconduct Commission each referred an issue to the other. Greens should seek the advice of whistleblowers who have experience.

CM Agreed

Question Much of the legislation treats the symptoms; the disease is the culture of corruption. Transparency is the way to treat the disease. Is there any focused action on reducing the trend towards secrecy?

CM It's definitely a cultural issue, especially because the public service has become a ministerial service, with senior public servants on contracts rather than permanent appointment. I have no solution. Ways forward include stronger FOI laws and permanent public service appointments, plus use of social media.

Comment You and other principled members of parliament are helping to change the culture.

Question In your new job as leader of the Greens, what is your agenda?

CM Reach out to regional Australia and to businesses in the low-carbon economy, to promote the arts, and address the meanness of spirit in Australia.

Pardons and party politics

Allan Kessing

[This is an edited version of text supplied by Allan.]

I joined the Service, in June 1990. When I retired in 2005, from what was then known as the Australian Customs Service, I'd enjoyed every day of my 15 years, contributing to something that I considered to have been both honourable and worthwhile. I would happily have continued for another ten years until mandatory retirement age,

doing the job I loved, had it not been for family reasons.

The Australian newspaper published, on 31 May 2005, what purported to be extracts from Intelligence Strategy reports which I'd researched and written between 2002–2004, describing security flaws and criminal activity at Sydney airport. There followed a week-long series of articles, by a team of at least seven reporters, each of whom had a particular focus and their own, very diverse, sources, re baggage handlers, security staff, theft and corruption.

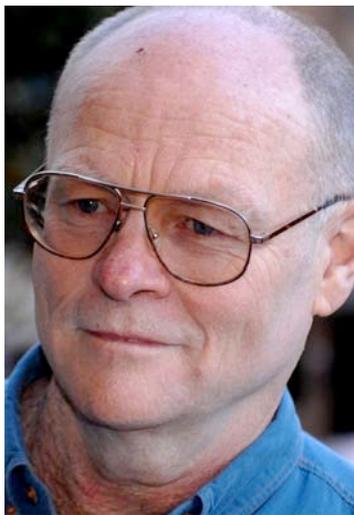
These reports had been suppressed by Customs management for almost three years for the most banal of reasons — cost to the privatised airport corporation of compliance with the requirements of the Customs Act. The licence to operate a port is granted by the Commonwealth conditionally and can be withdrawn if these requirements are not met. (No s16/17 licence has ever been revoked.)

Government action, at least in the form of damage containment, swiftly followed. Within a week, Prime Minister John Howard announced that Sir John Wheeler, a British expert, would conduct an inquiry into the matter. His report, published a couple of months later, confirmed what I'd demonstrated years before. Howard promised \$200m to address the problems identified, twice.

Whether the situation has been rectified is a moot point. Ex-colleagues mention a couple of spiffy new titles for senior staff but nothing else.

However, rather than ascertain why the reports had been buried by apparatchiks, to the detriment of the public, the government searched for someone to blame for the political embarrassment caused, a classic case of “shoot the messenger rather than deal with the problem.”

With an enraged government demanding a scapegoat, the Chief Officer of Internal Affairs referred the matter to the Australian Federal Police on 1 June 2005. Customs had been aware of the reports having been leaked to various media outlets in early May but Internal Affairs had been unable to identify anyone with a case to answer.



Allan Kessing

In April 2007 I was convicted of breaching s70, para (ii) of the Crimes Act, which prohibits unauthorised disclosure by retired officers of information acquired during their service. An appeal against my conviction was dismissed a week before Christmas 2008. I sought special leave to appeal to the High Court but when this was due to be heard my barrister was unavailable on a week's notice. I was still obliged to pay his bill for preparation of the case. I was unable to lodge another application, having spent my entire superannuation payout.

At a press conference arranged by Senator Nick Xenophon in Parliament House on 6 September 2009, I revealed that I had, in April 2005, made the reports available to then Shadow Transport Minister, Anthony Albanese. As Transport Minister and Leader of the House of Representatives Albanese has never said a word publicly about our meeting. As there was no further alternative, I sought the exercise of the Royal Prerogative of Mercy, generally known as a pardon, in November 2009.

Senator Xenophon, who has been a stalwart supporter, by tireless representation throughout 2010 and the early part of 2011 finally received a letter from Brendan O'Connor, then Home Affairs Minister for the Attorney General's department in July. It outlined why the government was not persuaded of the merits of my request and invited a response.

I responded in August, providing copious refutation of the obfuscating and irrelevant objections of the Australian Federal Police and Customs

bureaucracies to granting a pardon. In October 2012, after 13 months, Jason Clare, Minister for Justice and Home Affairs, rejected a pardon with a letter of astonishing vapidty.

The Labor Party, in its 2007 manifesto, strongly condemned my prosecution and conviction and promised to introduce comprehensive protection for whistleblowers acting in the public interest. The Rudd government, as promised, set up the Dreyfus committee to reform the disclosure laws. After 18 months of deafening silence it produced a perfect example of bipartisan blancmange, a risible set of procedures that would make even more unlikely the chance of exposing malfeasance.

When finally presented in February 2009, it disappeared without trace, a non-event changing nothing, and was deservedly buried. In March 2010 then Attorney-General McClelland promised that the government would present a whistleblower protection bill to Parliament “before the end of the year” but it still hasn't happened.

A month ago Andrew Wilkie put forward his proposals for a Private Member's bill but within hours it was spurned by Jason Clare as “weak and inadequate.” Clare proclaimed that the government would do a better one. Sometime.



Franz Kafka

The term Kafkaesque is often, wrongly in my view, used to mean a malevolent state. In fact Franz Kafka's novels actually portray a lumbering, uncaring, unthinking, machine not necessarily

evil but inhuman. Investigations acquire their own momentum and, irrationally, the longer it takes to find nothing, the more desperate functionaries became to justify wasted effort. It does not look good to devote hundreds of hours, and extraordinary resources, without result. Any outcome is better than none.

In the years I spent in various roles, on the wharves, at Sydney airport, intelligence research and analysis and finally as a covert officer, I was aware of a dark side of life that would horrify and sicken the general public, as it did me. It has been said that one should never watch sausages or legislation being made. I would extend that caution to law enforcement as it is practised daily.

The early retirement for “health reasons” of police, and other officers, engaged in protecting the community, should be a matter of public concern. One of the baleful results of knowing more than one would wish of the unpleasant side of life is that it is impossible to discuss it with anyone except colleagues. There is no point blighting someone else’s day.

One of the first lessons trainee officers are given is that there are *local rules*. This meant that each area of Customs had its own ways of doing things that were not as required by legislation. Before I had finished training, on my first posting to the wharf at White Bay, I was confronted by routine theft of bonded goods, that is under Customs control.

It was treated as a general perk for all involved. Truckies, wharfies, Customs officers and agents all considered it as the price of keeping the system, in general, running smoothly. Otherwise it would grind to a halt.

Instead of telling trainees to remain true to our oath of office and enforce the law, it was constantly drummed into us that if you stick your head up and denounce corruption, you will be the one targeted by your fellow officers and, if you persist, by Internal Affairs, charged under the iniquitous s70. We were even given examples of officers who had ignored this tradition and were subsequently crucified by Customs management.

This is the greatest sin of all in any large organisation. Kiss up, kick down

is the norm. The lesson we were meant to take from this was that if you confront those in power you will come off worst.

After graduation, in my first posting at Port Botany, then our major shipping complex which was meant to be the epitome of efficiency and shedding of the bad old ways of the Harbour wharves, it was clear that there was no change once out on those searing, concrete docks.

An officer there had been so harassed, and investigated, over his allegation of entrenched corruption in the clearance of cargo that he suffered a nervous breakdown. All his allegations were subsequently shown to be true, accurate and documented. Senior officers were allowed to retire on full pensions but the officer who had suffered so much received no apology or recognition.

The persecution began by phone tapping, mine, my mother’s, other family members and friends as well as trawling through my computer records, including overseas travel going back to 1983!



Allan travelling in 1983

From day one, two agents would be sitting in a car, from 6 or 7am until darkness fell, watching my mother’s house where I was living at the time. The mechanics of surveillance require that one officer follows the target on foot whilst the other remains in the vehicle, mobile and in contact with base. This meant at least two sets of officers per day.

Senator Xenophon asked about the cost of this operation. Customs refused to provide a guesstimate and the Australian Federal Police suggested *approximately* \$160,000. A figure this low seems unlikely, even were the agents on the minimum wage, never mind overtime.

The operation continued for at least six months, according to sworn statements by *some* of the officers which were included in the Brief of Evidence. In reality it went on a lot longer but, as the days turned into weeks and months, yielded no information of any kind and was never mentioned at trial.

Over the next 15 months the Crown asked for, and received, 8 adjournments. Each time a magistrate would ask why the answer was the same — “to gather evidence.” In the event nothing was found after the raids but each delay required representation. It seemed to be simply a strategy to cost me as much as possible in the hope that I’d give up. By the time trial began, the issue had long been forgotten by the public; the media dogs had barked and the government caravan moved on.

My mother had lived in that street for over half a century and all her neighbours looked out for her, especially her Greek widow friends, after my father died six years earlier. The obvious presence of the agents provoked much discussion in the street. I would often wave to them as I left the house to go shopping and exchange mum’s library books.

The sole reason that I had retired was to care for her in the final stages of acute myeloid leukaemia. She died, in her own bed as she wished, at the end of July, just short of her 82nd birthday.

I suppose that I should have been thankful for this ineptitude as it meant that my mother was not scared to death by the raids that took place on 6 September 2005, both there and at my bush shack in the Blue Mountains. Both places were unoccupied at the time.

It must also be acknowledged that disclosure of confidential information for base political reasons is a tactic of government. During the Wilkie affair, in order to damage his credibility, being unable to counter his claims, *someone* in government supplied Andrew Bolt with a strategic analysis from the Office of National Assessments, where Wilkie had worked. This enabled Bolt to write, apparently with impunity in his Melbourne newspaper,

“I have read the only secret report Wilkie has ever written and it is devoid of value ...”

The Australian Federal Police eventually lurched into action to investigate this leak of a top secret document from Australia’s principle national security organisation. A year or so later they were unable to establish the source of the leak, despite reporting that the only copy of the document unaccounted for at the time, had been signed out to Foreign Minister Alexander Downer. There are many other examples of protected leaks and dirty tricks not being prosecuted when it is not in the government interest.

Question Could you say something about your experiences with the court and its shortcomings?

AK The first judge made withering comments about the Crown’s case. Shortly after, he was replaced. The subsequent judge never questioned the Crown’s case.

Media’s role in discovering corruption: strengths and limitations

Wendy Bacon
Professor of Journalism
University of Technology, Sydney



Wendy Bacon

[notes by Brian Martin]

The media and whistleblowing are inextricably linked: they have a common interest in exposing information and seeking accountability. Also, the media can tell the stories of whistleblowers. The link between the media and whistleblowing is shown by

Wendy referring her students to *The Whistle* for information about whistleblowing — and finding that much of the material in *The Whistle* is stories from the media.

The days of the old media are gone. Today the social media are a key part of the picture. She looked on Twitter for the latest information on whistleblowing, and was taken to a *Guardian* letter from Desmond Tutu and two other Nobel Prize winners in support of military whistleblower Bradley Manning. The letter emphasised the critical importance of whistleblowers in public debate.

It’s possible to be more effective using Twitter, using it 5 to 20 minutes per day, for anyone from their 20s to 60s.

The case of police whistleblower Peter Fox is a classic, and illustrates a dilemma for journalists. On radio, Fox’s comments were followed by those of police commissioner Scipione, which were not challenged. A journalist should be checking out the claims, but resources are limited and the level of competition is greater. Susie Smith, a journalist, exposed tactics used to discredit Fox, and helped Fox to develop his own Twitter operations.

Wendy described the Roseanne Catt case at some length.

Wendy is working on two cases at the moment. She can’t say anything about them, because as soon as anything is said publicly, all doors will close.

Mainstream media space for news is shrinking, an assessment based on comparing stories in the *Sydney Morning Herald* in different decades. The thing that’s being left out is wrap-up of stories. Re exposure of corruption: we need independent voices beyond the management of major parties, such as Lee Rhiannon, Andrew Wilkie, Nick Xenophon and, in an earlier time, John Hatton.

There is a lot of potential for using social media and online databases. One possibility is putting *Whistle* stories into a database. Another is putting material on Crickey, Global Mail, New Matilda and other independent media: mainstream media don’t like being beaten to stories.

Question (John Millard) What is your advice to whistleblowers to make journalists more receptive?

WB You need “points to stand on,” such as new evidence for the Roseanne Catt case. Bringing in a huge pile of documents is not a good approach. Having a timeline of what happened is really helpful. For a journalist, it’s good to have a half-day debriefing session to get the story told the way the person wants it told. The key is a clear narrative, and a timeline is valuable for this. The aim is to get to the point of saying “There is a story.”

Question Is it enough for a journalist to deal only with allegations?

WB Journalists have to be aware of the risk of defamation, as statements have to be proved. If the statements are made in court or parliament, they can be more readily reported.

Question (Greg McMahon) Do issues break into the national consciousness because of an accumulation of problems?

WB This is an excellent point. Every step contributes. Stories are a building process. Peter Fox and many others pushed the issue of paedophilia for years before media made it into a national story.

Mayhem in the media

Leigh Dayton, writer and broadcaster



Leigh Dayton

[notes by Brian Martin]

Leigh worked at *The Australian* for over 10 years, with fantastic opportunities for all sorts of science reporting. In 2008, with the global financial

crisis, everything changed. The editorial line of the newspaper changed from “honest and conservative” to extremely right-wing and willing to blend news and editorial. Leigh suggests this was to attract advertising dollars from wealthy sectors such as the resources industry. Her life changed. Due to her straight stance on issues like climate change, she fell out of favor with senior editors.

In 2011–2012, Rupert Murdoch started having troubles with the phone hacking scandal at his newspaper *News of the World*. There was a restructuring across News Limited, except in Australia where the operations remain integrated. Leigh lost her job in this process in September 2012, along with hundreds of others. Most took voluntary redundancies; Leigh was one of the few forced redundancies. Television stations are also cutting staff. The process is happening worldwide.

There’s a change in the sort of stories that are covered. There are fewer journalists doing more work across different platforms (print, online). (The same week Leigh lost her job, Deborah Smith, a prominent science journalist, left the *Sydney Morning Herald*.) There are few specialist journalists outside politics, business and sports. In contrast, research worldwide has shown for decades that the public rates coverage of health, environment and science as their highest preferences, with sports down the list and politics and business last.

Journalists are at the bottom of the office hierarchy. Readers also get short shrift. When Leigh couldn’t find the online extras accompanying one of her stories — at the office — she asked an editor how readers would find them. The reply: “They’ll have to learn.”

After being told there would be no job cuts at *The Australian*, people began vanishing from the office: no longer being present. Newspapers rely increasingly on wire services — which themselves are suffering job cuts. This is heaven for public relations professionals, because harried journalists often crank out stories based on press releases with little scrutiny. They just summarise a scientific article without getting opinions from outside experts.

A lot of her time was taken up figuring out what the competing media

(“the opposition”) would be covering, to avoid being beaten to a story.

After leaving the paper, one of her freelance jobs was with the Australian Academy of Science, ghostwriting opinion pieces for prominent scientists. At least it was putting out credible material.

In summary, the ecology of the newsroom is changing with the rise of public relations, reliance on wire services, and editorial shifts, with media organisations talking to particular audiences. Radio gets its ideas from newspapers, so the problems facing the print media impact on radio.

In whistleblowing, the question is where to go. WBA can direct whistleblowers to suitable journalists and forms of social media.

In Australia, the media are highly concentrated. News Limited is dominant and its main competitor, Fairfax, is collapsing. An example is the pursuit of Julia Gillard’s past, asking questions without providing any information. Why has so much effort been put into this issue when radioactive hazards at Lucas Heights receive minimal coverage? The answer is the changes in news organisations.

That newsrooms are in crisis is a problem for democracy. People are not being properly informed.

Question What about *The Australian* going online and requiring people to pay?

LD People have to pay for printed newspapers, so it’s reasonable that people pay for online access. The problem is with paywalls that don’t work.

Question After two election campaigns in the US, why do so many people still believe Obama was born outside the country?

LD The US has the best democracy money can buy!

Question Would it be possible to create an alternative online news source using formerly employed journalists?

LD It would be difficult financially. There’s limited advertising for online news, especially start-ups.

How a false claims act might work

Gregor Urbas
Australian National University

[notes by Brian Martin]

What is the relationship between whistleblowing and reward? Many whistleblowers pay a large price in terms of career, financial cost and much else.

The US False Claims Act allows a citizen to sue on behalf of the government and have a financial stake in the proceedings: 15 to 30 percent of the recovered monies.

In an Australian Research Council funded project, Tom Faunce and Gregor are examining the operation of the US False Claims Act and how it might be applied in Australia.



Gregor Urbas

Question (Greg McMahon) Isn’t one difference between the US and Australia the recognition in the US that corruption can be systemic?

GU I’m not sure that you have to accept systemic government corruption occurs for a False Claims Act to be applicable, because the act applies to claims made against the government by companies.

Question (Leigh Dayton) Do you have any sense of how politicians will respond?

GU They are ambivalent. Politicians might see recognition of the existence of corruption as a reflection on them.

Question (Feliks Perera) How much money could be recovered in Australia?

GU We don’t know, but it is worth trying to see.

WBA AGM

Whistleblowers Australia Annual General Meeting

25 November 2012

North Parramatta, Sydney NSW

1. Meeting opened at 9.15am

Meeting opened by Cynthia Kardell,
President

Minutes taken by Brian Martin, acting
for the secretary Jeannie Berger

2. Attendees: Cynthia Kardell, Feliks Perera, Robina Cosser, Bob Steele, Geoff Turner, Stacey Higgins, Lisa Hamilton, Ross Sullivan, John Murray, Greg McMahon, Karl Pelechowski, Margaret Love, Sarolta Boda, David Forster, Alan Smith, Ken Smith, Yve De Brit, Brian Martin, Michael Cole, Jane Longhurst, Gerry Dempsey, Lesley Killen; one name withheld

3. Apologies: John Pezy, Shelley Pezy, Debbie Locke, Jeannie Berger, Toni Hoffman, Olga Parkes, Katrina McLean, John White, Karen Willing, Jim Page, Tom Lonsdale, Phil Vardy, Ivan Ransom, Graham Schorer

4. Previous Minutes, AGM 2011

Cynthia Kardell referred to copies of the draft minutes, published in the January 2012 edition of *The Whistle*.

Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2011 AGM.

Proposed: Greg McMahon

Seconded: Feliks Perera

Passed

4(1). Business arising (nil)

5. Election of office bearers

5(1) Position of president

Cynthia Kardell, nominee for position of national president, stood down for Brian Martin to act as chair. Because there were no other nominees, Cynthia was declared elected.

5(2) Other office bearer positions (Cynthia resumed the chair.)

The following, being the only nominees, were declared elected.

Vice President: Brian Martin

Junior Vice President: Robina Cosser

Treasurer: Feliks Perera

Secretary: Jeannie Berger

National Director: Greg McMahon

5(3) Ordinary committee members (6 positions)

Because there were no other nominees, the following were declared elected.

Geoff Turner

Toni Hoffman

Katrina McLean

Margaret Love

Lisa Hamilton

Stacey Higgins

6. Public Officer

Margaret Banas has agreed to remain the public officer. Cynthia thanked Margaret for her work over the past year.

7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2012. A motion was put forward to accept the financial statement.

Moved: Greg McMahon

Seconded: Robina Cosser

Passed.

Feliks' report

Once again, it is my pleasure to present to you the accounts for the financial year ended to 30 June 2012.

Our accounts show that we have an expenditure over income of \$364.95 for the year. Bulk of our expenditure has been spent in the production of *The Whistle* and subsidising the conference expenses. The expenses incurred during this financial year have benefited the membership, and I am sure that your committee will continue to follow this trend. The costs for the annual conference keep rising, and it is only appropriate that these costs are subsidised, enabling more members to attend and take part in the deliberations.

Our finances are in a very good position, and the membership numbers are slowly picking up. Donations from members during this financial year amounted to \$686.27.

After the discussions we had at the last annual general meeting in November 2011, we now have an amount of \$20,000 invested with the National Bank. We are also holding adequate funds to meet the day-to-day expenditure. At 30 June 2012, the association had no outstanding creditors or debtors.

Again, I would like to call on the existing membership to introduce at least one more person into the membership fold in this coming year. It is important that we tell the public at large about our organisation, and the support and help we give whistleblowers. Our strength in the coming years comes from our numbers, and the dedication of our membership. I hope the next financial year will be a more promising year, with a lot of achievements for our members.



WBA cash reserves

ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2012

INCOME

SUBSCRIPTIONS, \$3,175.00

DONATIONS, \$686.27

BANK INTEREST, \$0.88

TOTAL, \$3,862.15

EXPENDITURE

WHISTLE PRODUCTION COSTS, \$2,077.28

WEB DOMAIN COSTS, \$26.27

DEPARTMENT OF FAIR TRADING, \$49.00

TRAINING CONFERENCE, \$626.00

SUBSIDY FOR 2011 SYDNEY

CONFERENCE, \$1,193.70

RETURN TO BRANCHES: NSW RENT,

\$250.00

PAYPAL CHARGES, \$4.85

TOTAL, \$4,227.10

EXCESS OF EXPENDITURE OVER INCOME,
\$364.95

BALANCE SHEET, 30 JUNE 2012

ACCUMULATED FUND BROUGHT FORWARD
FROM 2011, \$25,291.91
LESS EXCESS OF EXPENDITURE OVER
INCOME FOR 2011/2012, (\$364.95)
TOTAL, \$24,926.96

BALANCE AT NATIONAL BANK AT 30
JUNE RECONCILED, \$4,326.96
FIXED DEPOSIT INVESTMENT, \$20,000.00
DEPOSIT FOR 2012 SYDNEY CONFERENCE,
\$600.00
TOTAL, \$24,926.96

Interest on the fixed deposit will be recorded when the deposit matures and interest due is credited to our account.

7(2) Form 12A for submission to the Department of Fair Trading and lodgement fee.

The meeting nominated Feliks to sign Form 12A for submission to the Department of Fair Trading, together with the lodgement fee.

Moved: Stacey Higgins
Seconded: Robina Cosser
Passed

8. Reports

Cynthia Kardell, President

Inquiries have been steady over the year, with more of them coming from the private sector and more coming to us before they blow the whistle. There's been an increase in calls from Western Australia, for example from an executive of a private health provider about false claims being made on Medicare (Google Ashton Foley). Committee members Katrina McLean and Margaret Love have started taking calls, too.

Media I have done interviews for television and local radio, depending on what is going on. Katrina has also done two for ABC radio in the ACT. I suspect Brian still gets some calls. Robina too, gets requests, in relation to the Queensland teachers' issues. Toni Hoffman represented us at Griffith University in Brisbane at the launch of the world's first online whistleblower survey, being run by researchers Suelette Dreyfus and AJ Brown.



Cynthia Kardell

Whistleblower protection The Greens were responsible for the repeal of the ACT whistleblower Act. The new act will come into effect in February 2013. It is generally considered to be the best to date, because (for example) an employer has to "ensure" protection, it "must" investigate, it "must" keep the whistleblower informed and it allows the whistleblower to seek an order restraining the employer from sacking him or her.

Andrew Wilkie, whistleblower and Independent MP, has tabled a private member's bill in the federal parliament to protect whistleblowers. It will be interesting to see whether either of the major parties will be brave enough to let it pass. AJ Brown, Griffith University, had a large part in the drafting it, as with the ACT legislation. I'll be attending a roundtable discussion on the bill in Canberra on 30 November

False Claims act Andrew Lawrence, senior lawyer and project leader at the federal Attorney General's Office, is inquiring into the feasibility of legislating a 'qui tam' or false claims act. I have been in touch with him and we will be involved in whatever way we can.

Cover-ups by the Reserve Bank of Australia note printing companies (two of them), the Australian Nuclear Science and Technology Organisation and the Catholic Church have figured prominently in the media again this

year: public pressure has forced governments to initiate commissions of inquiry, which look like being subsumed into a federal royal commission, which is predicted to run for 1–2 years. The good news is that our society has come to realise that our public institutions do tend to cover-up crime under threat of exposure, and they want something done about it.

Conference This year's conference was the best yet. So thanks to Feliks Perera, for handling the bookings; Jeannie Berger for the name badges; Lisa Hamilton for the meeting and greeting; Margaret Love for her presentation; Robina Cosser, Stacey Higgins and Geoff Turner for putting news of the conference up on the web; Lisa Hamilton and Robert Spence, for presenting their stories today; and Brian and Anna Salleh for their performances on clarinet (Brian) and voice and guitar (Anna). It wouldn't have happened or been the success it was without you all.



Anna Salleh,
who performed at the WBA conference

Geoff Turner, Communications

Geoff continues to maintain and update the WBA website and handle incoming inquiries. Despite the clear information on the website about what WBA is and can do, quite a few enquiries arrive from non-whistleblowers, and some of these people become upset when we say we won't

run their cases for them. Every now and then there is an email from an actual whistleblower.

Brian Martin, international matters and *The Whistle*

Brian circulated information about Ethi-call, a free telephone service provided by the St James Ethics Centre to help people deal with dilemmas at home or work — including whether and how to speak out in the public interest.

Brian is working on the second edition of *The Whistleblower's Handbook*, which will be available free online and via print-on-demand.

Brian encouraged members to submit stories for publication in *The Whistle*. Cynthia suggested writing letters to the editor.

Greg McMahon, Queensland

Greg discussed the Heiner affair, matters concerning the Brisbane flood, disclosures and dismissals at the University of Queensland, a review of the Queensland Crime and Misconduct Commission, and the “Whistling while they work” study.

Robina Cosser, Schools contact

Robina discussed her website <http://www.theteachersareblowingtheirwhistles.com/>, highlighting the number of people visiting, the most followed stories, issues raised in teachers' submissions to the federal government Parliamentary Inquiry into Workplace Bullying, and some of the current concerns of Queensland teachers.



Robina Cosser (from her website)

Stacey Higgins, WBA Facebook page administrator

Stacey told about what's been happening with the page, including privacy settings, the sort of information posted and what can be done with the page. There are now 119 friends.

Suggestions are welcome for managing the site.



Extract from WBA's Facebook page

9. Agenda items and motions

David Forster tabled a motion: “Whistleblowers Australia requests the Australian Labor Party at its annual federal conference to call upon The Honourable Jason Clare MP, Minister for Justice, to reverse his decision to refuse to grant a pardon and to be compensated for his losses, under the Royal Prerogative of Mercy, to Mr Allan Kessing.”

Moved: David Forster

Seconded: Alan Smith, Bob Steele

9(1) 2013 AGM: Sydney

10. AGM closed 12.15



Australian government reserve fund for a future false claims act

I know where I stand

Lotte Fog

Lotte Fog blew the whistle on radiotherapy underdosing at Royal Adelaide Hospital. She told her story (under the pseudonym Geraldine Macdonald) in the April 2009 issue of *The Whistle*, where a poem of hers was published. This is the last of six poems Lotte wrote during the period of her whistleblowing. She can be contacted at lottesfog@yahoo.co.uk.

I never expected
to be in a place
where while at work
completely un-
deniably
I witnessed a wrong

It took some time
for me to see
how wrong it was
surrounded by
my colleagues who
chose differently
to look away
protect themselves
chose not to act

but gradually
I knew where I stood

the days were lonely
the pain was deep
as I stood alone
but I knew where I stood

My choice was made
and I never once
regretted being
a whistleblower

My sense of ethical
right and wrong
is very clear
I'm stronger today
and I know where I stand

Whistleblowers Australia contacts

Postal address PO Box U129, Wollongong NSW 2500

New South Wales

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

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Peter Fox supported

When people read about the way whistleblowers are treated, many are outraged. The following letters to the editor were published in the *Sydney Morning Herald* on 14 November 2012.

Whistleblower Fox is a hero — pay him respect

I read with distress the treatment allegedly given by some in the NSW Police to Detective Chief Inspector Peter Fox (“‘Satisfied’ whistleblower weighs future in the force,” smh.com.au, November 13). Threats by phone and on police letterhead? He says he knew his career was finished as soon as he spoke out.

Some suggestions for Commissioner Andrew Scipione: award him the relevant police medal for bravery; give him a promotion because of his dedication to duty; assure him that you will protect him and that, if he wishes to continue as a police officer, he will not be victimised.

This man has upheld the highest standards in his sworn duty as a police officer to protect and act in the interests of the community. He has put his safety, and the welfare of his family on the line, to protect others.

For God’s sake (and I choose those words deliberately), I beg you to act to restore the confidence of the community in you and your force.

Ken Stevenson, Waterfall

The public will be watching how Premier Barry O’Farrell, Police Minister Mike Gallacher and Police Commissioner Scipione handle the persecution of Detective Chief Inspector Fox.

This brave man has been the catalyst for a royal commission to expose appalling crimes that have been covered up by widespread systemic corruption across a range of organisations, allegedly including the NSW Police. Any failure of the NSW government to protect DCI Fox will be judged harshly.

Paul Tweddell, Elizabeth Bay

Whistleblowers Australia membership

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

To subscribe to *The Whistle* but not join WBA, the annual subscription fee is \$25.

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

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