

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

The Whistle

INTERNATIONAL CAMPAIGN TO
AMEND (ILO) 111 - SEE PAGE 3



OCTOBER 1996

NEWSLETTER OF WHISTLEBLOWERS AUSTRALIA INC

Box 129, University of Wollongong, Wollongong NSW 2500

IN THIS ISSUE

President's message	1
AGM details	2
International campaign to amend ILO 111	3
Letter to the editor	3
Poem: Where the crossed paths meet ..	4
From the National Director	6
NSW Report	8
Tasmanian news	10
News from South Australia	11
NSW Attorney General visits NSW WBs	12
From the Celebration of Whistleblowing	13
Tricky Dicky - where are you?	14
Walking the tightrope of ignorance ..	15
New whistleblowing book out	16
A case study of media treatment of a whistleblowing	17
WBA contacts and meeting details ..	19

All expressions of opinion are published on the basis that they are not to be regarded as expressing the official opinion of Whistleblowers

CONTRIBUTIONS PLEASE

Articles, letters, cartoons or illustrations dealing with any aspect of whistleblowing will be considered for publication.

Address material to:

The Editor, c/- PO Box M44,
Marrickville South, NSW 2204.
Please submit written material on
computer disk or typewritten and
double-spaced.

FROM THE NATIONAL PRESIDENT

Writing to authorities: is it worthwhile?

Whistleblowers have written many thousands of letters to politicians, government departments, ombudspersons and the like. Indeed, some individual whistleblowers have written hundreds of letters on their own. Is this a worthwhile method of getting results? Letters can be about corruption, dangers to the public or whatever the correspondent is concerned about. They can also be to protest against attacks on whistleblowers.

Speaking to a politician face-to-face or by phone often can produce better results than a letter, though even in these cases a follow-up letter is useful. But it can be quite difficult to actually get to speak to a politician. As well, a letter has the advantage of providing a permanent record.

If you write a letter to the Prime Minister or some other minister, it is normally referred to the relevant department. It is passed down the bureaucratic hierarchy to some public servant who is assigned the responsibility

of drafting a reply. The draft is then passed back up the hierarchy, sometimes being modified on the way. It is quite unusual for a minister to actually read a reply, even when his or her name goes at the bottom of the letter, which is not very often for "important" politicians.

What you receive is a response from some public servant.

I talked to three public servants who gave me candid comments on how the system operates. I'll start with the most optimistic account.

Chris is a relatively new public servant who drafts replies to letters written to a leading minister. She is told by others to be as bland as possible.

However, she prefers to be more conscientious. As well as finding out the other side of the story to that of the letter-writer, she sometimes will follow up the issue by ringing other departments to ensure that some action is taken. For example, if the matter falls within the →

NSW Police
Commissioner Ryan will
speak at the
Whistleblowers Australia
Annual General Meeting
Sunday, 1 December
1996 in Sydney.

(See page 2 for full details)

jurisdiction of a state government, she will write a note or ring relevant people to make sure they respond, instead of just writing back to the letter-writer to say that the matter is one for the state government. She says that a small percentage of public servants go out of their way to help letter-writers, but most give perfunctory responses.

Chris recommends that letter-writers ask one or two specific questions. For example, "Is the minister aware of X? What are you going to do about it? I'm looking forward to your answer." Such direct questions are more difficult to wriggle out of. She also says that there is lots of shuffling of letters between departments to find the right place. Therefore, you should find out beforehand exactly who you should write to. Also, send copies to other departments to make sure you are not fobbed off. Chris also recommends sending copies to opposition ministers.

Thomas has years of experience in a major government department. He says that an individual person's complaint is normally ignored or dismissed. The department can stall by interpreting regulations differently, not responding, delaying through referral to committees, and a host of other methods. Public servants are trained in how to respond to protect current policy, in other words how to lie.

In Thomas's view, writing letters will only have an impact if the writer represents a powerful force, such as a large number of people or prestigious figures such as judges, in which case writing may not be required anyway. The other time writing can have an

impact is when potentially damaging disclosures might be made unless action is taken. Such disclosures

write a letter, since the power of the whistleblower comes from publicity.

Chris notes that when it comes to potentially damaging disclosures, contacting opposition politicians is sometimes effective. They want to embarrass the government, at least on some issues, especially through asking questions in Parliament.

Alan has an even more cynical view of writing letters. He believes that many letters from whistleblowers, even though sent to different departments, are referred to the same department where they are answered by the same person!

This is quite possible since there are very detailed systems of numbering and tracking of letters. Thus, a whistleblower may have the illusion of contacting different authorities when actually being thwarted in the same way over and over. Alan would go even further to suggest that writing to the government provides a way for a small group of public servants to keep tabs on whistleblowers.

The general message from these individuals, as well as others I've talked to, is that writing letters to government is largely a waste of time, though there are a few public servants and politicians who will do what they can for you.

Far better is to circulate your letter at your workplace or send it to the local newspaper. Find out the name of the journalist who covers your area of concern and then ring up to talk to

them. With a bit of direct distribution and media coverage, the government will find out about your concerns quickly enough. □

WHISTLEBLOWERS AUSTRALIA
Annual General Meeting
2.00-5.00 p.m., Sunday 1 December 1996
Presbyterian Church Hall, Campbell Street,
Balmain (Sydney)
Hosted by the NSW Branch of WBA
Schedule

□ 12.00 Come early for a sausage sizzle plus extras, meet old friends and new faces

□ 1.00 Reports of activities during the year, including the conference in Melbourne, NSW branch celebration, cases of significance, submissions, publications, web site, etc. Reports must be brief. If you'd like to give a report, let me know in advance.

□ 1.40 Strategy discussions. Following last year's procedure, we will break into small groups to assess 1996 activities and plan future ones. Tentatively, groups will include:

(1) Internet
(2) Publicity (including media, leaflets, stalls)
(3) Formal channels (including whistleblower legislation, FOI, Protected Disclosures Act, police liaison)
(4) Building harmonious relations in WBA.

If you have a strong preference for a group on a topic other than these, let me know in advance.

□ 2.40 Policy issues. The recommendations made by the national executive at the June meeting (see *The Whistle*, August, pages 1-2) will be presented as motions. If you have other motions, it would be helpful if you let me know in advance.

□ 3.20 Election of the office bearers and ordinary members of the national committee. Formally, nominations should be made in writing to the national secretary in advance. In the past, we have operated less formally, consulting beforehand to find suitable volunteers. If you are interested in joining the national committee, talk with one or more of the current members.

President: Brian Martin
Vice-president: Jean Lennane
Vice-president: Isla MacGregor
Treasurer: Vince Neary
Secretary: Matilda Bawden
Director: Lesley Pinson
Legislation coordinator: Greg McMahon

Formally, there is provision for up to 6 ordinary members of the national committee, of which Greg McMahon is one. As well, the chairs of the state/territory branches are members of the national committee. They should be elected at annual general meetings of the branches.

□ 3.30 Tea break

□ 4.00 Guest speaker: Peter Ryan, NSW Police Commissioner

□ 5.00 Close of meeting, drinks and snacks. Those interested can adjourn to a nearby pub or coffee shop.

Brian Martin: phone: 042-287860 (home), 042-213763 (work); fax: 042-213452; e-mail: brian_martin@uow.edu.au. □

International Campaign to Amend the International Labour Organisation Convention (ILO) 111

From ISLA MCGREGOR

Whistleblowers Australia in collaboration with Freedom to Care (our UK counterpart) are coordinating an international campaign to have Public Interest Disclosures (PIDs) included under the ILO 111 Article 1.1.(a). The Convention preamble and Article section states:

"... Convention No.111

Convention concerning Discrimination in Respect of Employment and Occupation¹

The General Conference of the International Labour Organisation, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4th June 1958, and;

Having decided upon the option of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and;

Having determined that these proposals shall take the form of an international Convention and;

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights, adopts this twenty-fifth day of June of the year one thousand

nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term discrimination includes:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

1. Date of coming into force: 15 June 1960"

The Amendment, quite simply would include the term "public interest disclosure" after the words

"political opinion," in Article 1.1.(a).

WBA will be seeking the support of State and Federal Unions, the ACTU and political parties across Australia.

Isla MacGregor and Lesley Pinson have met with Matthew Reynolds, Tasmanian State Secretary of the PSU Group of the Community and Public Sector Union (CPSU) to discuss support for the campaign. Matthew agreed to take the proposal to the CPSU National Executive and National Council Meeting in September. Geoff Dannock, PSU member, will be liaising with Matthew on the campaign. Preliminary discussions with various Union Delegates and Officials have indicated considerable support for the campaign.

Freedom to Care (FTC) are approaching Alf Lomas MEP (Member of European Parliament) and have enlisted the support of their patron John Hendy QC.

John Hendy has done ILO work and is UK's leading employment barrister and President of the Employment Rights Institute. FTC has approached several major Unions, including UNISON (health, local government, public employees) and TGWU (Transport and General Workers).

If you would like to assist with this campaign, liaise with Union Delegates, Unions etc. please contact Isla MacGregor Ph/Fax 03 6239 1652. □

Letter from Matilda Bawden (South Australian Branch) published in *Alternative Law Journal* (ALJ) August 1996, re: Letter from Matthew Goode (solicitor in South Australian Attorney General's Department) to the Editor, ALJ, April 1996

I'm scared. I don't know if the whole world is full of wise men bluffing, or fools who mean it!

I don't recall who uttered the quote, but it describes the first thought that crossed my mind after reading Matthew Goode's responses (ALJ, April and June 1996) to Dr De Maria's article, "Whistleblowing" (ALJ, December 1995). In fact, Dr De Maria's reply to Goode appears almost prophetic – predicting precisely what was awaiting South Australians seeking protection under the *Whistleblowers Protection Act 1993*

(WPA).

But firstly to the Ombudsman's letter (June 1996). If he were not a creature of the State, how is it he receives full legal representation from the Crown Solicitor in any actions against his office. No conflict of interest, he would suggest!? Guilt by association, I'd say.

To illustrate just how 'miserably conceived' the Act has been; Goode insists that Dr De Maria was wrong to maintain that the WPA utilises the concept of "good faith" to determine the merits of a disclosure. Goode

was right! By design, "good faith" has nothing to do with it, because the Crown reserves the right to act contrary to any such concept; lest the same criterion should be applied to judge its own actions, or call those actions and motives into question. To illustrate the point, recently two people brought their complaints before the Equal Opportunity Tribunal (EOT), seeking protection from victimisation by the Ombudsman under the WPA. Both complainants were accused by the Crown of acting vexatiously, but in

so doing offered no evidence to support that allegation. The Crown's strategy was solely based on maligning the reputations of the complainants and challenging the Tribunal's own authority. By contrast, our members listed very specifically the exact nature of their grievances against the Ombudsman, and his response to their disclosures, without one reference to any perceptions of the Ombudsman's character or personality. The Crown, shamefully, went on to argue that the Ombudsman was entitled to decline dealing with "purported disclosures". Not surprisingly then, that the Ombudsman denies receiving any complaints from whistleblowers; but what does he really know of their "purported" nature when he hides behind the cloak of "discretion"? However, we know that "discretion" is all too often used to justify quite deliberate acts of omission or commission that result in victimisation, discrimination and detriment to others.

Consistent with this observation and Dr De Maria's concern that "appropriate" refers to *process* rather than merit or motivation', on a number of occasions, the Crown's representative made reference to the fact that the merits of each case was not the issue in determining the Tribunal's jurisdiction and that evidence regarding individual cases should be presented 'when, and if, the merits of the case are heard'. Here, we are left with little doubt that the merits of neither case were, in fact, ever investigated; nor were the findings of any such (even preliminary) investigations ever offered to the Tribunal to justify the accusation of vexation against the individuals.

Goode made at least two references to injunctive relief being available – either through the courts or Equal Opportunity Tribunal (EOT). Predictably, the Crown Solicitor's office fought tooth and nail to keep both actions **out of that forum** allegedly because the Tribunal did not have jurisdiction because the WPA does not **give** the Tribunal such jurisdiction. However, the Act states under Section 9 (2) that

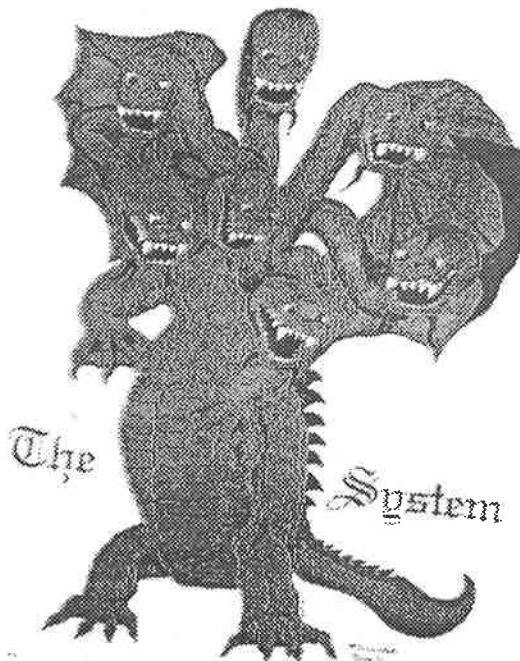
An act of victimisation under this Act may be dealt with -

(a) as a tort; or

(b) as if it were an act of victimisation under the *Equal Opportunities Act 1984*."

Similarly, the Act **does not deny** the Tribunal jurisdiction, by implica-

tion or otherwise, in any other part of the Act. Section 5(2) even goes to say that an "appropriate authority" may not be the only authority to whom it may be reasonable and appropriate to make a disclosure. The Former Commissioner for Equal Opportunity, Ms Josephine Tiddy, was even quoted in Hansard (27th January, 1994) as saying to the



Select Committee on Public Interest Whistleblowing, that she would personally undertake to hear complaints from whistleblowers about **victimisation by the Ombudsman**. Hence, the Former EO Commissioner had no question as to the clarity of her role in receiving such complaints or that such complaints might arise. Whilst the Former Commissioner dismissed the complaints brought before her, she did instruct that they be taken to the Tribunal if unhappy with her response. It was through this invitation that our members approached

the Tribunal.

Indicative of the Tribunal's uncertainty about its powers and affirming Dr De Maria's comment that 'injunctive relief ... is still an unfamiliar remedy for the courts and the process is bedevilled with formality and high costs', the Tribunal has reserved its decision on the matter of its jurisdiction. Hence, it appears that our members have indeed been sent to 'an unconnected forum' where they might get the relief they are seeking, but then again – might not!

However sagacious, I suspect even Dr De Maria could not have foreseen the extent of desperate argument that would be put up by the Crown to (as he put it) "exploit statutory ambiguity" and, in turn, dismantle any authority contained by WPA 1993 (as well as the very spirit in which Mr Goode would have us believe it was drafted). In an astounding, all-out effort to render the WPA null and void, the Crown argued that, **if taken literally**, protection cannot be afforded to a person under the act if the act of victimisation is perpetrated by the "appropriate authority" (i.e. the authority to whom one makes a disclosure about wrongdoing) as illustrated by the following:

The respondent submits that ... [the] Act does not, as a matter of Statutory interpretation, **and cannot have been intended to**, include in the definition of "a person" at the beginning of Section 9 the person who is "an appropriate authority" ... [If the definition] is expanded to include the full information for the definition of [Section 9] ... it is clear that the appropriate authority is a different person from the person first named in Section 9. This section 9 would in effect read:

A person (A) who causes detri-

WHERE THE CROSSED PATHS MEET
*Society stands like a man with a big stick
Fickle, fenceless, remorseless yet weak as
children sigh and women cry silent not in
public street.*

*Brave men kneel to grovel at his feet;
good men turn corrupt rebellious in
defeat as pressure turns this pyramid
slow, watch intelligence evaporate and
glow, burning, burning, burning;
for ignorance's classless cloying
heat destroys lives
where the crossed paths meet.*

ment to another (B) on the grounds that [(B) made a disclosure] ... to a person (C) [who is a reasonable and appropriate authority] ... commits an act of victimisation. It is clear from the above paragraph that the persons (A), (B) and (C) are, **and are intended to be**, different persons and that Section 9 **does not apply to the "appropriate authority"**.

This is in spite of the fact that a "public officer" (who may be the subject of a disclosure for wrongdoing under S4(2)), is defined so exhaustively as to include **'any other officer or employee of the Crown'**. In offering South Australians this banal and misleading logic to neutralise the effects of the WPA, instead of acknowledging that persons A and C can be the same person, but at different points in time, the Crown once more demonstrates ill-faith in its actions. In fact, when I asked the Crown's representative whether our members could expect a similar challenge if they took their issues before a court, I was told that it was a loaded question, and that I would not get a answer. Suffice it to say, then, that Goode's own office **will not rule out** further challenges to attempts by our members to have their disclosures investigated – even by a court.

Even more frightening was the argument that "appropriate authorities" should be exempt from actions against them under the Act because

authorities ... appointed by statute ... [and] persons with **high status in the community ... must have been selected** on the basis that they are **presumed** to be persons who can be entrusted with the investigation process and **are unlikely to abuse their power. It is submitted that it is entirely unlikely that the fact that an authority receives a disclosure would motivate that authority**

to victimise the person making the disclosure, when it is their statutory duty to receive and deal with such disclosure.

Is the Crown suggesting that there is some arbitrary socio-economic threshold of status that one must cross before being regarded as being of sufficiently "high status" within the community as not to warrant (or preclude the public from carrying out) the scrutiny of their functions? If so, surely I have a right to be informed of the criteria for this obscure threshold; as I would like to know when I might cross it!

On the subject of defamation, Dr De Maria asserts that Goode's 'neat catch-all phrase " ... incurs no civil or criminal liability ... " does nothing to allay concerns of reprisals in the form of litigation'. It is, however, anything but 'superfluous' to whistleblowers that they should be given absolute privilege against reprisals by the State, since the Crown has already threatened our members with legal costs – for pursuing their public interest disclosures. How sad that whilst Goode would have us believe we incur no liability for our actions under the Act, it can still be used to destroy us when we place faith in the good-intent of the legislation and exercise our right to be heard.

Of further significance, and consistent with concerns expressed by Dr De Maria that the Act is too ambiguous and lacking the specifics necessary to protect whistleblowers, is the Crown's observation that

The Whistleblowers Act is silent as to what any persons receiving a disclosure must do, with the exception of section 5(5) where a disclosure of fraud or corruption must be passed on to the bodies named in that section. Section 6 **assumes** the relevant authority will

carry out an investigation **but does not prescribe how and with what powers such an investigation will take place.** It is submitted that it will depend on the authority chosen and what powers and functions such authority has, whether by statute or otherwise.

What on earth would these "authorities" see as their responsibility and purpose, for goodness sakes? Is not the Ombudsman aware of his "Royal Commission powers" or the implications of disclosure for whistleblowers and the community? Astounding! How does Goode propose the WPA can work when it does not compel authorities to investigate claims? If Goode had even the most basic understanding about the nature of whistleblowing and if he really did represent the whistleblower's best interests, he would advocate the needs of whistleblowers rather than becoming defensive to criticisms by Dr De Maria (who more truly represents the views whistleblowers). In so doing, he would also acknowledge that failure by authorities to investigate complaints is by far the most common/predictable form of reprisal (or act of victimisation) experienced by whistleblowers because it: denies the most preliminary access to justice; serves to contain the disclosure; perpetuates the collusions and deceptions generated by the wrongdoers; diminishes the apparent merits of the matters being disclosed with the passage of time and resultant destruction of vital evidence; demoralises and frustrates the messenger; and, prolongs their suffering in countless other ways (i.e. financially, socially, emotionally).

Space does not permit further substantiation of massive problems, not just with the WPA, but Government accountability processes in general (or the lack thereof). Nevertheless, if something looks, walks, quacks and smells like a duck; in all probability, it is not a cow. We are, therefore, looking for a reason to believe that, what we perceive to be indicators of government corruption and maladministration, are in fact not so. In a truly accountable system of government (which the Westminster system is touted as being), we would have been given such reason by now. So, when Dr De Maria recently predicted that within a year Victoria would probably be the only state left in Australia without a Whistleblower's Act, I suspect he was once again wrong, as South Australia may very well have joined Victoria in this distinction from the rest of the country. □

This poem was contributed by John Lodge who also made the following comments:

"Society I often feel sanctions institutionalised corruption and has it almost codified in an unwritten way to an extent where those with a conscience or scruples feel blackmailed. Perhaps corruption is about weakness, temptation, fear and most of all the application of intelligence. Until we encourage and reward clear logical thinking, perhaps obstinate strength may be the last guardian of a free society divorced from manipulation safe in the knowledge that things do not have to get out of hand if people sum up enough courage to speak out if only once." □

NSW Branch's principled stand achieves win for whistleblower

In June 1996, representatives from WBA publicly resigned from the Advisory Council which oversees the NSW Police Service's Internal Witness Protection Unit citing the Service's ongoing action against police whistleblower Tony Katsoulis as an indication that it was 'business as usual' for police whistleblowers. In late September the police minister announced in parliament that the Service would not continue with its appeal against a court's finding in Mr Katsoulis' favour and that a new era had begun in the police culture and treatment of whistleblowers.

This was great news for Tony. It is certainly an infinitely preferable result than has been achieved in Victoria – the Victorian Police Service recently dismissed Karl Konrad who went public some time ago with serious allegations about the Victorian police.

At this point in time WBA has not yet decided whether or not it would recommence participation on the Advisory Council on the Internal Witness Protection Unit.

Sadly the NSW Branch continues to hear from serving police officers who are complaining of ongoing harassment, lack of adequate investigation of their allegations and lack of adequate support from senior management.

It seems that the Royal Commission is also no longer interested, or resourced, to deal with these issues. Commissioner Wood recently apparently made public comments that 'the cycle of corruption had been broken' which seems to signal that he believes the commission has brought about huge change within the police service. Time will tell but given that the service is still managed by the same senior officers, with only a change of personnel in one position, Justice Wood may be naive to have formed such an opinion over what has been shown over and over again in previous royal commissions to be an extremely complex problem. It may be cynical, but is perhaps more realistic, to expect that without significant changes at senior levels of management, things are more likely to revert back to what they were with the service able to be complacent in the knowledge that there won't be another royal commission for at least 10

years! Still, maybe we should be optimistic that the Police Integrity Commission will be successful in a way that the Independent Commission Against Corruption (ICAC) has not been.

Parliamentary Joint Committee on the ICAC

It's question time again for Mr O'Keefe. On 25 October he is required to attend public hearings at Parliament House to answer questions put to him by members of the Parliamentary Joint Committee (PJC) on various aspects of ICAC's (lack of?) activities and (non?) performance. This is a biannual event. ICAC has recently had some rather

"Begin difficult things while they are easy ... A thousand mile journey begins with one step."

Lao Tse

bad press and Mr O'Keefe seems to spend an awful lot of time writing letters to the papers defending his organisation (that is when he's not using ICAC resources to fax bulletins to the media defending the National Trust against allegations in his capacity as President of the National Trust)! ICAC must have staff permanently employed to read the papers and listen to every radio station given the speed of the responses Mr O'Keefe makes to any adverse publicity about ICAC.

He consistently says that ICAC is playing a very important role in 'eradicating' corruption in NSW. Well not if you listen to whistleblowers it isn't. It continues to use its \$14 million budget to make decisions not to investigate corruption, and staff at ICAC are so busy doing this that they simply don't have the time to tell WBs why they won't investigate. This, according to O'Keefe would require an even bigger budget. Of course there will never ever be any proof that ICAC has had any success in eradicating any corruption much as they keep telling us they are – there is only the ongoing proof that they have failed every time a whistleblower speaks

out. No wonder Mr O'Keefe displays the attitude that he does towards WBs – each one of us is telling him he's failed!

Every time ICAC is adversely compared to the current royal commission Mr O'Keefe squeals that the royal commission was given a flying start due to the enormous amount of information on police corruption provided to it by ICAC. Well, why on earth didn't the ICAC do anything about that information? One of our recent press releases described ICAC as a \$14 million filing cabinet. Presumably when a royal commission is announced into another public sector organisation ICAC will again justify its existence by giving it a 'flying start' with all the information it collects yet manages not to investigate.

Anyone who has questions for Mr O'Keefe should contact Jim Regan, NSW Branch Committee member, on 016 288 920, who will attempt to get these to the committee members prior to the hearings. You can also contact David Emery, the Project Officer for the Committee directly on 02 9230 3056. Anyone interested should also try to attend the hearings at 10 am on 25 October at Parliament House to see whether Mr O'Keefe can answer the questions put to him without the help of one of his ministers.

Estimates Committees

Readers might like to take advantage of the annual opportunities presented by estimates committees which provide a forum for serious questions to be asked of Government departments and senior bureaucrats about expenditure and waste. In NSW these committees will be sitting in March so there is plenty of time to think up some pertinent and probing questions as to exactly how public money has been spent (wasted?). I can certainly think of some departments who should be seriously questioned as to how they can justify the amount of resources and legal expense used to defend themselves against allegations made by WBs, in attempting to get rid of WBs and in attempting to obstruct WBs' access to information requested under FOI.

Forthcoming Inquiries

Readers may be interested in pro-

viding submissions to the Harrison Inquiry into the Australian Federal Police. Submissions should be marked for the attention of Ian Harrison QC, GPO Box 2047, Sydney NSW 2001, phone 02 9241 1977. This inquiry was recently announced by the Federal Attorney General and the head of the AFP. No terms of reference have been publicised yet but it would seem that Mr Harrison will be inquiring into broad ranging allegations of corruption within the AFP.

Another inquiry for which submissions have been invited is the 'Review of visual and aural surveillance devices' which is being conducted by the Law Reform Commission of NSW, GPO Box 5199, Sydney NSW 2001. The terms of reference of this review have been set by the Attorney General of NSW and are as follows;

the current scope and operation of the *Listening Devices Act 1984* (NSW)

the need to regulate the use of visual surveillance equipment, and any related matter.

In undertaking this review the Commission should have regard to:

the protection of the privacy of the individual;

the views and interests of users of surveillance technology, including law enforcement agencies, private investigators, and owners of private premises such as banks, service stations and shops;

the use of surveillance technology in public places.

Forthcoming Events

Ken Marslew from 'Enough is Enough' has advised of a conference/debate which is to be held in the Parliament House (NSW) theatre at 6.30 p.m. on 29 October entitled 'Criminal Law – the system and us, the community'. The Law Reform Commission, the Director of Public Prosecutions, the Attorney General's Department and the Law Society will be participating. There is no fee to attend although donations will be gratefully accepted for Mr Marslew's organisation. This will be an interesting time to meet some politicians and bureaucrats face to face.

Rewards for whistleblowers?

The NSW Council of the Cost of Government has recently set up a 'Better Government Hotline'. Suggestions are sought to give details of

waste and mismanagement or which are innovative, which may lead to significant cost savings or which may result in improved customer service and awards will be made to those people whose suggestions prove successful. Names will be kept confidential if required and apparently all respondents will be advised of the outcomes of their suggestions. Forms can be obtained by phoning 1800 640 676.

WBA's National Media Contact list

Isla McGregor is producing a contact list for the media which is to include names of people who are willing to speak publicly on whistleblowing in general and/or on specific cases or issues. Please could anyone who is interested in being on this list provide Isla (002 391 652) with their name, address, phone numbers Email, fax, etc. and details of what they are willing to speak about (please try not to make this not more than six words).

"What would you attempt to do if you knew you could not fail?"

Robert Schuller

National Human Rights Week

The National Human Rights week runs from 3 to 10 December. Awards will be announced on Tuesday, 10 December at an Awards Service to be held in Sydney. If you want to know about functions during that week contact the Human Rights and Equal Opportunity Commission National Office on 02 9284 9600.

The WBA has been nominated for the human rights community award for the work it has done in campaigning for the protection and support of WBs and for raising public awareness of the issues involved. The rights of WBs are breached under sections 2, 18, 19 and 26 of the International Covenant of Civil and Political Rights. Many of the issues that WBs expose include human rights abuses of members of the community i.e. mental health patients, aboriginal deaths in custody etc.

Meetings – organisation and conduct

Numerous problems have arisen at meetings held by branches of

WBA over the past couple of years. These have ranged from disputes between members, meetings going on too long, dislike of the format of meetings, complaints that people have not had an opportunity to speak or that others have spoken too much, etc.

Unfortunately, with WBs being individuals from diverse backgrounds, experience etc there is no simple solution to resolving these issues. Hopefully the democratic process generally operates so that at least the majority are satisfied at each meeting.

Isla McGregor arranged for a package of information to be passed on to me which was produced by Adult Education (Community Action Skills). It includes leaflets on issues such as chairing meetings, writing news releases, brochures, letters to papers and letters to MPs, fundraising, petitioning, direct (non violent) action, organising a demonstration and many others.

Isla thought that the leaflet titled "Active Listening" would be useful to all those who attend meetings and it is reproduced below;

ESSENTIALS

1. To attend to the person by: listening rather than talking, being interested in what they say, how they express it.... attending non-verbally myself, quietly observing the person's body language.

2. to understand what the person is communicating, especially the feelings and what is giving rise to them: a sincere attempt to enter the world of the person, an attempt to see the story as the person experiences it, focus on the speaker's feelings rather than the facts.

The person rather than the problem.

The speaker rather than others in their story

Specifics – the particular rather than the generalities.

3. Tell the person my understanding of their story.

AVOID

Evaluations – bad and good, 'shoulds' and 'oughts', questioning, analysing, reassuring

RISKS

Intense emotions may be expressed
I may feel very uncomfortable

Active Listening may be inappropriate when:

the person has simple needs for information,

I have an investment in a particular outcome to the problem,

I am emotionally involved with the person on this issue, I don't feel like it, regardless of the reason.

Fundraising stickers

We still have a number of stickers to sell at \$3 each. These are fairly eye-catching, red and white writing on a black background which say "whistleblowers - our right to know".

Contributions to The Whistle

I would like to thank all those who have contributed to *The Whistle* in the past and those who will in the future. Positive comment is occasionally gratefully received by me and that, and the fact that people are contributing, tells me my efforts, and those of others, in getting the Whistle to the stage it is at have been worthwhile. I am trying hard to make sure that it is produced regularly on a bi-monthly basis. Currently, resources won't stretch to much more than that.

Also sincere thanks are due to

Cynthia Kardell who took over the monumental task of mailing the Whistle to you on a number of occasions when I have been away.

Personal comment

I expect that most readers have been observing the debate on VOLUNTARY euthanasia. (I stress the word voluntary as this word is missing from much media coverage). What readers may not know is that Dr Philip Nitschke, the Northern Territory doctor who has taken a leading stand on this issue, has been a whistleblower of note on other issues in the past. Although others may disagree with his views and actions on voluntary euthanasia it is still possible to recognise his courage in openly challenging powerful interests. I admire Philip for his fortitude in speaking out publicly about the realities of something most of us would rather not know about or have to face. He is fighting against the most powerful institutions and has already had to withstand serious efforts to discredit him. I doubt that these efforts

will stop. I wish him well for the future.

International Links

Some individual members have linked up on a number of issues with members of Freedom to Care, a UK organisation which has objectives which are similar to those of WBA. FtC have joined us in our campaign to amend the ILO on human rights to outlaw the discrimination of an employee who makes a public interest disclosure. We are trying to gain the support of unions both in the UK and overseas, so readers with union contacts could help by bringing this to the attention of their unions.

FtC is also running a major campaign against Colonial Mutual which is directed to bringing its training of sales representatives into compliance with Personal Investment Regulations (UK). They have asked the WBA for assistance with this campaign. Anyone with information that may be relevant should contact Brian Martin on 042 213 763.

LESLEY PINSON

NEW SOUTH WALES REPORT

From Alex Tees, NSW Branch Secretary

Ongoing concerns about the ICAC and WBA survey

It was the considered view of the 1996 Annual NSW General Meeting of the NSW Branch that ICAC has demonstrably failed in its mission and a motion of no confidence was passed (again).

In the last few years WBA has become increasingly concerned about the overall effectiveness and mode of operation of ICAC. In a number of cases ICAC has been arguably ineffectual which is disturbing to say the least when it has an annual budget of \$14 million. Examples include the failure to properly expose Police corruption, the failure to properly investigate the NSW Parks and Wildlife Service and some of its officers' involvement in the illegal smuggling of wildlife out of Australia, failure to properly investigate the State Rail Authority, failure to properly investigate the NSW Building Services Corporation and the NSW and Federal Tax payer funded Apprenticeship scheme.

Readers may care to note WBA's reservations about the effectiveness

of ICAC. WBA (NSW) specifically withholds any endorsement of ICAC and does NOT recommend it as an organisation to whistleblowers.

WBA (NSW) is enclosing a survey on the performance of ICAC with this issue. We would be grateful if everyone could return the form even if it is not completed - firstly because our resources are stretched and we can use the forms for other people, secondly because it will allow for better statistical information and thirdly, it will give us a better idea of who has had no dealings at all with ICAC. A Parliamentary Committee will soon be accepting submissions and reviewing the performance of ICAC. If relevant, please could readers provide a brief summary of their experiences of this organisation, together with an opinion as to its effectiveness, anonymously if you wish.

Review of the NSW Protected Disclosures Act

This Act which is supposed to protect whistleblowers has recently been the subject of a review by a bi-

partisan parliamentary committee. The Branch made a wide ranging submission to the committee. The committee tabled a report in parliament in late September which has been quite positively viewed by those members who have read it. The main recommendations of the Committee (which was unanimous in its findings) are (1) the establishment of a PDU within the Ombudsman's Office which will assist and provide feedback to whistleblowers, promote whistleblowing, monitor the investigation process, etc., (2) the reversal of the onus of proof in relation to detrimental action (in that the employer must prove that the detrimental action did not occur because the person made a protected disclosure), (3) a requirement that all investigative agencies provide reasons for not proceeding with an investigation (Barry won't be happy, he doesn't think he should have to answer to anyone), (4) an avenue for Wbs to claim damages, (5) to incorporate Wb protection in SES contracts and (6) to extend the Act to cover private sector dealings with the public sector.

Unfortunately the Committee did not adopt our proposals to (1) legislate a duty to investigate, (2) ensure Wbs have access to Legal Aid, (3) pro-actively protect the Wb to prevent dismissal or (4) to extend the Act to cover private sector whistleblowing.

Still, all in all, the Committee paid serious attention to the submissions made by the Branch and by individual Wbs and apart from some things which we are not happy with, all in all the process so far can be regarded as a big step forward.

Unfortunately the report has yet to be debated in parliament and its recommendations have then to be passed and implemented. Given the nature of this issue it is unlikely that the government will show any great willingness to do either so we have a long way to go yet.

Many thanks to Cynthia Kardell who coordinated the Branch's contribution to the parliamentary process.

First Sunday of every month – General Meetings – watch this space!

Mr Peter Ryan, the new Police Commissioner of NSW has confirmed he will address WBS this year. He will attend the December meeting, during the AGM. Anyone who has questions to put to Mr Ryan, or wishes to see specific issues raised with him, should contact Jim Regan on 016 288 920.

Wbs will recall the September meeting which was well attended for the address by NSW Attorney General, Mr Jeff Shaw QC. It was a memorable occasion and the Branch expresses its appreciation for his attendance. His address is reprinted with his consent in this issue.

Whistleblowing celebration – voted a huge success!

This gathering on 20th August 1996 was one of the most successful functions ever held by WBA (NSW) and was attended by some 150-200 people. Speakers included Rev Ivan Ransom, Rev Dorothy McRae McMahon, ABC Whistleblower Mr John Millard, Mr Quentin Dempster, and former Independent MP. Mr John Hatton. Mr John Hatton was voted a patron of WBA (NSW) on this occasion and spoke of the developments leading to the establishment of the Royal Commission into the NSW Police Service.

The Branch notes the attendance of whistleblowers Ms Debbie Locke and Mr Eddie Azzopardi, WBA

National President Mr Brian Martin, Detective Inspector Caroline Smith from the NSW Police Service Internal Witness Support Program and a Project Officer from the NSW Parliamentary Committee on the ICAC (a positive sign of on going change). Despite the fact that invitations were issued no one attended from ICAC.

WBA (NSW) committee thanks Ms Cynthia Kardell and Mr Jim Regan for making the event possible and all the others who assisted to make it a very worthwhile event. This was a good example of what effective teamwork can do. A relatively large number of WBA (NSW) members worked together to make the event a great success. Many thanks also to Rev Ivan Ransom for providing the venue.

Wbs commend the speech given by Reverend McRae McMahon which is published in this issue. Unfortunately we have not been able to commit the other speeches to print as yet.

**"Courage is doing what
you're afraid to do. There
can be no courage unless
you're scared."**

Eddie Rickenbacker

The abuse of psychiatric and psychological treatment and interviews with respect to whistleblowers

Many Wbs are reporting that they have been required to attend psychiatric and/or psychological interviews either with a view to their being discredited or compulsorily medically retired (by Health Quest a division of the NSW Health Department in the case of NSW Government Departments). Send in your views/submissions, a full survey is planned. Charles Willock is the coordinator who has volunteered for this project.

Maladministration and waste at the Sydney Opera House

Well it would seem that a certain nameless WBA Member may have contributed to the demise of Lloyd Martin the General Manager of the Sydney Opera House. Some of you may have seen the copy of the article

about this on the front page of the Bulletin Magazine (especially at the WBA celebration in NSW recently on 20/08/96) The waste etc. revealed included a bungled restructure, waste of \$500,000 on the computerised Events Management System (EMS) by the use of external contractors etc.

The Australian Broadcasting Corporation (ABC).

WBA (NSW) has written a preliminary submission to the Official Federal Government Review of the ABC being conducted by Mr Bob Mansfield supporting current funding for the ABC News and other services and also drawing attention to the plight of NSW "ABC Whistleblowers". These include Mr John Millard (who spoke at the Celebration on 20th August 1996) who revealed how the "Homeshow Program" content was influenced by commercial considerations of a sponsor and another courageous ABC Wb who has made allegations of fraud in the ABC's Television Aboriginal Affairs Unit which produces "Blackout" and other programs. It is understood that there is some suggestion that a so called "armslength" production company was set up by certain ABC employees who then proceeded to profit from programs made using ABC resources and facilities. It is further understood that the Australian Federal Police are investigating this matter.

ABC whistleblowers have been the subject of appalling victimisation and abuse and resultant stress and WBA (NSW) strongly urges ABC management to put in place a proper set of mandatory procedures to assist whistleblowers legally and financially and also to provide proper support and counseling assistance.

WBA (NSW) urges all its members and supporters to make submissions to the Official Review of the ABC.

Internet e-mail list and NSW Branch Committee contacts

Our thanks to Committee member Dr Mustafa Karamanoglu who is compiling an Internet e-mail list. Please advise your e-mail address ASAP if you want to be the recipient of occasional news/bulletins to wbansw@ozemail.com.au.

The branch also has a web page : <http://www.ozemail.com.au/~wbansw/index.html>. ☐

From ISLA MCGREGOR

Monthly meetings

The Tasmanian Branch of Whistleblowers Australia has been holding monthly meetings since May of this year. Mick Skrijel's visit in February and Brian Martin's visit in April acted as a catalyst for the group to meet regularly. David Obendorf, the first Tasmanian Whistleblower to speak at a public forum in Tasmania on Whistleblowing has paved the way for other WBs to speak out and provided invaluable support for others and assisted with promotion of WBA's profile at a State and National Level. (David and Bill de Maria did an excellent interview on ABC Radio National's program *Life Matters* the day before the national conference).

The support meetings are informal and designed to facilitate Whistleblowers sharing their stories. Networking case material with other individual national cases is prominent in discussion.

Updates from other WBA branches and discussion on state of play with state/fed. whistleblower protection legislation are regular items on the Agenda. The focus of activities for the group is on community education.

Structure of the Tasmanian WBA branch

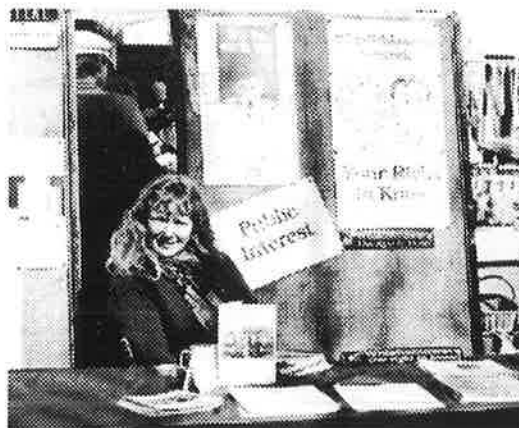
To date the structure of the branch has remained informal as the priority is to provide a venue for mutual support and information dissemination. (i.e. facilitation of meetings is open to any participant). Luncheon get togethers are held at a quiet country hotel, 10 mins from Hobart city and attendances have been steadily increasing to about twelve at the last meeting.

Distribution of national WBA leaflet

Thanks to Brian Martin and his sterling efforts with the production of the Whistleblowers Australia pamphlet, as a community based organisation we are now able to promote our existence with ease. The Tasmanian Branch of WBA was delighted to see our National Leaflet published in the June/July edition of the Tasmanian Council of Social Services (TASCOSS) Newsletter in its profile on Community Organisations. WBA's leaflet was also

included in the conference materials package for 150 participants at TASCOSS' Fourth Human Service Conference in September "Equity, Fairness and Justice; Are they still part of Australia's Agenda?".

Additionally, the leaflet has been distributed with other WBA material to: Various Non-Government Organisations, Tasmanian Libraries, Community Legal Services, Office of the Status of Women, Working Women's Centre, the Tasmanian Regional Office of the Human Rights and Equal Opportunity Commission, members of State and Federal Parliaments, Unions and some private legal firms. Plans are underway for further distribution to health service practitioners, neighbourhood and community centres, unions, government departments, appropriate university departments, local councils,



Isla McGregor tends the Whistleblowers stall at Salamanca Place market in Hobart

private businesses and corporations.

Lynn Francis, Tas WBA member is this week attending the National Conference on Intellectual Disability and distributing pamphlets as well as raising issues relating to quality of care and maladministration in the disability services area. Lynn recently returned from working in Kalgoorlie, WA, where she worked with Whistleblowers Ray Kean and Eric Stein on workers safety and kick backs in the mining industry.

State and National conferences held in Tasmania will continue to provide an opportunity to disseminate WBA information nationally.

Visit of WBA national director to Tasmania

Lesley Pinson visited Tasmania just before the National Conference

in June. Lesley attended a WBA Branch meeting and updated members on National issues, in particular those relating to ICAC and the Review of the Protected Disclosures Act NSW.

Lesley and Isla had a meeting with the Hon Judy Jackson MHA (ALP Shadow Minister for Justice) to discuss issues relating to the ALP's proposed Bill for Whistleblower Protection Legislation.

The meeting was productive and promised further consultation between the ALP and WBA over future legislation.

In addition Lesley and Isla met with State Secretary of the PSU Group of the Community and Public Sector Union, Matthew Reynolds, to discuss support for the International Campaign for Amendment of the International Labour Organisation (ILO) Convention 111 to include Public Interest Disclosures (PIDs). See article in this issue "International Campaign to Amend the International Labour Organisation Convention 111".

Whistleblowers in the market place

On Saturdays Hobart hosts a large outdoor market in historic Salamanca Place. It's a popular and friendly venue for all manner of street sellers. The market is also a fertile ground for local and community groups to discuss issues with the public, get their petitions signed or simply make a political statement.

WBA shares stall space with a few other community groups. To date we've had 5 successful market days with the emphasis on disseminating information, displays, talking to interested passers-by about the phenomena of whistleblowing etc, fund raising through the sale of stickers or by donation and generally being seen as a legitimate public interest group.

It's been very positively received and we've been amazed at the response from the increasing number of people who care to stop for a chat.

One of the more eventful stalls took place in the weeks leading up to the recent Tasmanian state and federal elections earlier this year. The polities were out amongst their constituents in several Hobart suburbs. The electorate of federal member and former Minister for Justice, Duncan Kerr had just received a pamphlet, courtesy of Mick Skrijel →

From MATILDA BAWDEN

Equal Opportunities Tribunal

Since my last contribution to *The Whistle*, the South Australian Branch has been involved in assisting two of its members take three separate matters before the Equal Opportunities Tribunal. The matter to be determined by the Tribunal, in each instance, was one regarding its jurisdiction to hear matters under the *Whistleblower Protection Act 1993* (WPA). Unfortunately, the Tribunal ruled that it did not have jurisdiction to hear complaints against the Ombudsman.

To fully appreciate the challenges which lay ahead and the absurd (albeit successful) arguments put forth by the Crown, readers might want to follow the contributions made to the *Alternative Law Journal* (ALJ) for a background on the SA Act. These include: an article titled "Whistleblowing" by Dr William De Maria (December 1995); a letter of response to the article by Matthew Goode and a letter from Dr De Maria regarding Goode's response to his article (April 1996); and, Letters to the Editor from the South Australian Ombudsman and Matthew Goode regarding Dr De Maria's Letter to the Editor for April (June 1996). Since our members' appearance before the Tribunal in July, I also submitted my own letter to the *Alternative Law Journal* in support of Dr De Maria's contribution and to highlight the deceptions behind the SA WPA '93.

Just prior to the whistleblowing debate in the ALJ, our branch had written to the Premier expressing concerns about the Ombudsman's refusal to properly investigate matters. In our letter, we cited five case examples by three of our members. As anticipated, the Premier wrote back dismissing the matters raised and, in effect, argued that there are no whistleblowers in SA.

In the Premier's opinion, our members merely represent the disgruntled 50% of parties who lose in any grievance/litigation process. Of great interest and curiosity would be to know how many of the 50% of **successful** litigants/complainants are, in fact, government agencies or representatives as opposed to private citizens.

Vigil

In the June *Whistle*, I mentioned plans for staging a vigil. Unfortunately, the vigil that was planned for July could not take place as there were problems with arranging a suitable venue. Although alternative venues were suggested (e.g. steps of Parliament House), I was not convinced that these would present us with the desired outcome of raising the profile of our branch, as well as raising the community's own understanding about the nature of whistleblowing. Nevertheless, I have not given up on the idea and, if time and energy permits, I hope to take up the idea of a vigil for the summer months.

Codes of conduct

Recently, our branch received an invitation from the Commissioner for Public Employment to provide feedback on its *Code of Conduct for Public Employees* booklet and Commissioner's Circulars No. 64 (*Guidelines for Ethical Conduct*) and 69 (*Whistleblowers Protection Act*). This invitation was in response to a letter I wrote expressing concerns about moves to rewrite the Code and the fear that it might seek to lower, rather than raise, the threshold of acceptable behaviour by our public servants, as I was informed by that office that government departments will be encouraged to each adopt their own Code. There will be significant implications for whistleblowers seeking protection under the WPA in this state if these concerns are realised. Whilst it

will be interesting to watch the current process take its course, we now need to prepare a submission by end of September. However, if readers interstate wish to provide input or share their experiences and concerns with us, their feedback would be deeply appreciated.

Whistleblowers office in SA

Since the National Conference, I have been steadily pursuing the idea of establishing a Whistleblowers Office in this state and have commenced work on a Business Plan. Essentially, I see such an office serving several important functions, including to: **advocate** for whistleblowers (individually and collectively); **employ** whistleblowers; **promote** whistleblowing (i.e. benefits and costs to the community); and, **offer workers alternatives and choices** currently not offered by most unions or other channels of representation. Whilst I don't expect to perform miracles (as the magnitude of the task is quite daunting), I think a tangible plan (which I will be delighted to share with others interested in doing something similar) will make the whole project seem much more manageable, if not realistic. Once again, I would love feedback on the concept (i.e. difficulties, issues and, especially, solutions!) and hope to incorporate **all** contributions into the final plan, with the view to making it relevant to each state (as a model).

Finally, one of our members, John Pezy, has had a successful settlement with the CSIRO and we congratulate John on his courage and determination to see the matter resolved to his satisfaction. The attention he has drawn to his disclosures from a number of external sources, we are confident, will ensure greater accountability by the service due to the pressures of external scrutiny. □

and friends. At the stall we had a rather noisy 'chat' with a gentleman who objected vehemently to the letterboxed pamphlet. Within a quarter of an hour Minister Kerr with minder in tow, came by and later still the stall and its occupants were videoed. Fortunately we were dressed impeccably but sadly we didn't rate on the evening

news!

On a less clandestine note it is really encouraging to know that there

whistleblowing and the extent of wrongdoings which WBs attempt to expose. Several people offered their own personal experiences, others knew of local and national cases. Donations were very freely given.

Normally stalls are held on the Saturday before our monthly meetings but we will be holding them fortnightly in the lead up to Human Rights Week. □

Human Rights Week 2-10 December

The Tasmanian Branch of WBA is organising the first of their annual "ARTICLE 19 - SERVICE TO FREE SPEECH AWARDS" to coincide with Human Rights Week in December.

MC: Rick Snell, Lecturer in Administrative Law, University of Tasmania.

DATE: Saturday, 7 December, 1996 starting at 4 p.m.

THE EVENT: "FREE SPEECH - A FOUNDATION FOR HUMAN RIGHTS"

A barbecue including vegetarian food will be available. BYO

VENUE: The Home of Lynn Francis, 13 Roebourne Road, Otago Bay; ph: 002 72 2806.

NSW Attorney General Jeff Shaw visits NSW WBs.

The address below, given at the Sunday, 1 September meeting, is published with the consent of its author the Hon. J W Shaw, QC, MLC, NSW Attorney General. His talk ranged across issues of the existing whistleblower protection to the proposed reform of privacy and data protection legislation. NSW WBs take this opportunity to publicly thank Jeff Shaw for his time and interest.

"I am pleased to have the opportunity to address the meeting of Whistleblowers Australia. In recent times, substantial progress has been made toward the protection of whistleblowers in the public sector from recrimination or indeed from being subject to any form of disadvantage because of disclosures about corrupt conduct, maladministration and waste.

"I am pleased to note that the Independent Commission Against Corruption has now released Phases 1 and 2 of its interim report on "Monitoring the Impact of the *Protected Disclosures Act 1994*," and has found that while there are gaps in understanding of the effect of the *Protected Disclosures Act* many organisations have modified fraud prevention policies to include protected disclosures and that most organisations recognise that cultural change is necessary to ensure the successful implementation of the Act.

"Most organisations indicated that the existence of the Act would make it easier, at least for some people, to make a report of corrupt conduct, maladministration and waste.

"I understand that ICAC is about to begin the third phase of its report, which is a major survey of public sector workers to assess attitudes to whistleblowing. The survey will cover matters including knowledge of the Act, the circumstances under which people would make a protected disclosure and attitudes to whistleblowing generally.

"Many of you may think that there is still a long way to go in the area of education and cultural change in organisations, before whistleblowers feel confident in making protected disclosures. Nevertheless I understand that 177 protected disclosures were made to ICAC in the year up to March 1996, and I find this a substantial figure given that the Act has only recently come into force and that many agencies have told ICAC that they lack the resources to run an effective education campaign.

"The *Protected Disclosures Act* will be complemented by the introduction of comprehensive privacy and data protection legislation which

the Government plans to implement late this year. I will now outline the proposals, which will regulate the disclosure of personal information by public sector agencies, and which may apply to the private sector in the future.

"The legislation will protect privacy and the rights of the individual by the recognition, dissemination and enforcement of data protection principles consistent with international best practice standards.

"New South Wales was one of the first jurisdictions in the world to introduce legislation dealing specifi-

"Many of you may think that there is still a long way to go in the area of education and cultural change in organisations, before whistleblowers feel confident in making protected disclosures."

cally with privacy protection when the NSW Privacy Committee was established pursuant to the *Privacy Committee Act 1975*.

"Throughout its 20 year history, the Committee has played a valuable role in providing advice on privacy policy to both the Government and the private sectors; in educating the community about important privacy issues, and conciliating complaints brought by individuals about breaches of privacy. However it is now apparent that more detailed and extensive legislation is needed in order to address the demands of evolving information technologies,

community and international expectations for effective privacy safeguards and in particular the need for the development of standards in relation to data handling.

"As you know, the Government is itself one of the main collectors and users of personal information. I consider that effective safeguards in relation to that information are a vital part of Government's compact with the community. As the leading State in the area of communications, media and information technology, it is appropriate that NSW take a lead in the area of privacy legislation.

"The proposed data protection principles to be enshrined in the legislation will be made applicable to public sector agencies immediately upon passage of the legislation. The principles deal with the collection, solicitation and retention of personal information, and its release.

"For example, the principles will ensure that personal information is collected only for a lawful purpose and that its collection is necessary for that purpose. agencies will be required to take reasonable steps to ensure that people know that information is being collected and why.

"The principles require agencies to ensure that information is kept for no longer than is necessary, that information is secured and that clients can find out whether agencies hold personal information and what information is. The principles also restrict the use of information for purposes other than that for which it was gathered.

"The legislation will create the statutory office of Privacy Commissioner. The Commissioner will investigate and attempt to resolve complaints concerning breaches of principles. If a complaint cannot be resolved the complainant will have the right to seek damages for any loss suffered.

"It is proposed that the Privacy Commissioner's Office will be combined with those of the Anti Discrimination Board. The proposed new body will provide a central contact point for complaints involving privacy and anti discrimination breaches.

"The legislation will allow for →

Whistleblowers NSW salute whistleblowers everywhere

Set out below is the speech made by Dorothy McRae McMahon at the Celebration held 20 August 1996. Dorothy, who is presently the Director of the National Commission for Mission for the Uniting Church in Australia, has consented to its publication in the Whistle. The Whistle takes this opportunity to say thank you Dorothy. For hers is a timeless, evocative message: joyous yet disturbing. We have all been there.

codes of practice to be made by regulation. These codes will be extended to private agencies in consultation with the private sector, and will be enforceable in the same way as the data protection principles.

"The previous government introduced a *Privacy and Data Bill* in 1994, and this was re-introduced earlier this year as an Opposition Private Member's bill. That legislation was strongly criticised by the NSW Privacy Committee and others. The main shortcomings included the failure to ensure a consistent and principled approach throughout the public sector, the lack of any meaningful enforcement mechanisms, and the very weak application of the Bill to the private sector. The proposed Government bill will address each of these areas.

"The proposed bill will also include criminal sanctions addressed at the corrupt trade of personal information by public officials. The need to safeguard personal information held by government agencies was highlighted in particular by the ICAC's 1992 report into the unauthorised release of government information.

"Concerns have been expressed about the use of video surveillance in the workplace and in public places. Such surveillance may be overt or covert and may include places where people might reasonably expect their privacy to be guaranteed such as change rooms and toilets. Of course, I recognise that surveillance may be justified in some circumstances and may be a tool in crime prevention or indeed for monitoring the actions of the police.

"In order to ensure that these issues are thoroughly canvassed in the community, I have asked the Law Reform Commission to consider the use of video surveillance and whether it should be regulated. At the same time, the commission will review the Listening Devices Act, which is now more than 10 years old, to consider whether it meets its object and to ensure that consistent principles apply to the regulation of both audio and video surveillance."

J.W. SHAW

"We often think we know what a dangerous society looks like. We imagine a totalitarian regime with an oppressive ruler or rulers. Or we might think of the dangers inherent in fundamentalisms of various kinds where there is an absence of doubt and those who are "inside" or "outside" the group.

"However, in both these situations there is some chance of becoming a part of a solidarity of the oppressed, either from inside the situation or by taking the risk of moving outside it.

"Oddly enough, in a so-called "free and democratic" society, we can create a more difficult and costly environment for the emerging of truth. Generally speaking, in this sort of society, we hope for and expect something better. We have this dream that a community based on freedom and just relationships is possible.

"However the reality is often something far removed from this hope. We far more often find ourselves in something more like what Scott Peck in his book *A World Waiting To Be Born* calls a pseudo-community.

"Pseudo-community takes many forms. But at its heart it is based on pretence – a pretence that everything is going well, relationships are just and appropriate, everyone is pulling their weight and we are all being honest and responsible. In sustaining this pretence, everyone knows the unspoken ground rules – we don't speak about certain things, we don't stir or rock the boat and we protect the people who should be called to account because one day we might need protection ourselves. We image an environment of niceness when most of us know that it is far from nice and people are being destroyed and our integrity undermined day by day. When vulnerable people go under in this system, we thank God it is not us and press on with fear in our hearts and smiles on our faces (and, if we are the privileged members of the club, many drinks over lunch). I hasten to say that the church is as good at this pseudo community as

anyone else!

"In this dangerous environment lives our whistleblower. Because of the pervasiveness of this culture in our society, while you can leave one part of it you are likely to find yourself in another part of it.

"Because the whole culture operates directly against solidarity for the honest and brave our potential whistleblowers are usually isolated – or come innocently and hopefully fresh into the scene, unaware of the dangerous rules which are operating.

"The truly remarkable thing is that whistleblowers exist and claim their place in this punishing environment. When they act and speak, they do far more than become the agents for freedom, democracy and truth. They dare to smash the myth, the pretence, the very basis on which people are living and working together.

"They live as though real community is actually possible – a community where people have the courage to relate to each other with integrity. They dare to image life where people take responsibility for what they know and what they do in the cause of being authentic and moving towards a better world.

"These people are the real leaders of our society. Other people may think they are because they have power, elected and unelected. Real leadership always points us towards real community where people may live unafraid of the truth and in just and respectful relationships with each other.

"Recently, on TV, there was a programme about the writer Jane Rule. In it she said that we are all creative because we all have one voice. When I heard that, I thought that: *When they give voice, Whistleblowers are the artists in our society who dare to paint pictures with brushstrokes of passionate colour in a grey world. They are the musicians who play a clear melody of life among a murky chaos of sounds.*

"I celebrate the hope they offer to us all and give thanks for the challenge of their courage."

DOROTHY MCRAE MCMAHON

Tricky Dicky – where are you?

A personal comment on the recent 1996 National Conference
"Towards a Culture of Dissent"

By M. BARR

I was privileged to be able to attend the above conference to a reasonable extent despite it clashing with a number of other conferences in Melbourne. It was quite fortuitous that these clashes occurred because at every conference which I attended I developed recurrent delusions of seeing Richard Nixon putting bugs underneath everybody's seats and somehow I thought I was caught in a Star Trek time warp of 1972 and that I needed to be beamed away very quickly. Anyway, I will discuss further that great defender of open government, democracy and freedom, Richard Nixon, in the second half of my article.

I am writing to blow the whistle on some whistleblowers but I am reluctant to do so because of the relatively short time I have been associated officially with Whistleblowers (I joined at the beginning of the year). However I should point out that I directly contacted Dr. Boetcher in 1992 seeking assistance about a new Chelmsford scandal that had broken out in Melbourne that was ten times worse than Sydney's. Dr Boetcher was helped by Dr. Jean Lennane in the Sydney Chelmsford Inquiry and I cannot understand why he did not pass my letter on to Dr. Lennane. Secondly, when Dr. Lennane, the then national president of Whistleblowers, was in Melbourne two years later, I was unable to have a proper conversation because of the limited time available and I only became aware again of Whistleblowers in relation to their 1995 seminar meeting in Melbourne.

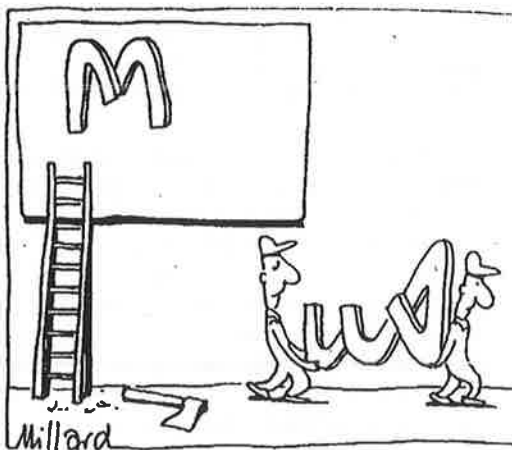
As every whistleblower knows, the problem of entrenched corruption is ten times bigger than what appears at the surface so it is a pity that the Victorian branch is not ten times larger than it is. I am doing research into constitutional politics and I know ten departments of political science whose members would have been interested in attending or speaking at the 1996 conference, but I was told that the program was fixed. I sent a brief paper on constitutional politics in Victoria to the Melbourne conference paper organizer but it arrived a little too late. However, he did not ask me to photocopy it myself which I could have

done.

The state of power in Victoria is extremely pertinent to Whistleblowers because the Premier, Mr. Kennett, has turned political patronage into an art form especially by extracting loyalty from senior public servants by using a system of bribes and rewards. I have sent a copy of a full paper on the politicization of the public service to the editor of "The Whistle" so that copies of the paper can be arranged with him/her.

The opportunity for guilt and corruption is ten times higher in Victoria because Mr. Kennett is madly privatising the public sector and hence placing the private contractors beyond public scrutiny. A salient point is the way the government has withdrawn funds from the health department and welfare sector over the last few years, e.g. problems in mental health in 1993-95.

This incompetent organisational performance was demonstrated again in early 1996 when a gross shortage of funds for fire protection at Kew Cottages in eastern Melbourne led to deaths of 9 retarded patients as a



result of reduction of staff and partly due to lack of fire protection systems.

Similarly the Health and Community Services Department got into an even worse pickle in 1996 when the Auditor-General revealed that there were 36 cases of deaths of wards of state who were abused children referred to Victorian Health Department for protection under the new compulsory reporting legislation enacted by Mr. Kennett in 1993 after the death of Daniel Valerio but for

which Mr. Justice Fogarty has complained that there were totally inadequate resources appropriately allocated for the size of the problem, e.g. insufficient protection workers.

The Auditor-General accused the children's judiciary of turning a blind eye to this state of affairs but the chief magistrate said that non-lawyers could not professionally comment on magistrates' decisions, thereby virtually inviting the Auditor-General to ask the Bar Council to assess the performance of the children's court in relation to child abuse cases where the judiciary had transferred partial protection of wards of state to the government knowing there were insufficient resources for supervision.

So the public relies on public service for some vital services and it is the vulnerable and weak who suffer the most when there is a loss of resources.

Hence I hope I have proven the point that Victoria had a lot of corruption material to contribute and proudly display to the conference and we may have missed the boat by letting go the opportunity. Certainly the state shadow Attorney-General spoke to us a few months ago and perhaps the Attorney-General or her representative should have been invited on this occasion, although Bill De Maria wanted Mr. Kennett to attend so he could learn how to pay his speeding fines. I hasten to add that Senator Woodley was a very useful speaker.

Perhaps I didn't get a chance to hear somebody fully discuss the level of corruption in Victoria but I was shown the next best thing – how the agents of corruption operate via destroying those organisations which will denounce publicly the promoters of graft, nepotism and illegality.

Furthermore, some of the speakers took us for morons! The new head of the NSW Police Internal Witness Scheme (for whistleblowers), although well meaning, said that there was a potential for a complete change in attitude in the force, but this assertion needed proof of statistics to convince cynics such as myself. (The appointment of the new police commissioner may prove me

wrong.) Secondly, the Victorian Police Operation Beacon representative should have been asked to comment on this matter so a further golden opportunity was lost.

Finally we come to the exciting issue of imposters, saboteurs, dirty tricksters and confidence men. Whistleblowers don't normally talk about them because they live in a semi utopian world where fraudsters don't masquerade as public servants, politicians or lawyers but the illusion has to be shattered when one looks at Richard Nixon. Indeed everywhere I went on the weekend of June 29-30 to four conferences there was chicanery and subterfuge and this sent me very strong signals.

Whistleblowers must face the fact that it is a political association and is now the target of undermining and underhand dealing. There is no doubt that there was at least one professional spy, crook or double agent at the conference because of the shocking disappearance of vital documents, money, etc. I have never seen such disorganisation before.

The occurrence of these incidents is surprising in the light of the prominent warning in the November, 1995, *Whistle*, p.7, stating that the Chairman of the Victorian Branch of WBA had twice had his car tampered with in early November 1995 and Mr. Skrijel's house in Victoria was broken into in October.

My expertise in this field goes

further back than most members of Whistleblowers. In early 1972 Richard Nixon destroyed the candidacy of the leading opposite candidate, Senator McGovern, via infiltrators sabotaging his correspondence etc. and confirmed his deception with the Watergate scandal in 1973. In the 1980's many environmental and pollution groups were infiltrated by decoys and distracters so that Greenpeace became very prominent. For instance the Vietnam Veterans Association which was said to be campaigning about Agent Orange were run by ex-servicemen who had worked in military intelligence, so that the organisation is a sham in political terms. Similarly the Victorian branch of silicone breast implants association has been white-anted and non-functional; possibly illness is a contributing factor. So it was not surprising that I saw false fronts and shams everywhere, e.g., at the political conference organised by a one woman band called Dianne Anderson, which a number of whistleblowers attended on the Sunday. Half the seats of the hall were empty because the people who booked them failed to turn up (Edgar Hoover, Nixon's head of FBI, must be alive and well in Melbourne).

Then at the next conference I attended, which was indirectly related to Chelmsford issues in Melbourne, I discovered that I had been badmouthed to people I have never

met, but who generously informed me of my reputation as a whistleblower. Finally, at another of these illuminating scientific conferences a speaker who claims to be a proper researcher gave a presentation which seemed to me to be a plagiaristic lift off from an American scientist.

The speaker was not called William McBride but he certainly made a fool of that conference.

When I complained about some of the above shenanigans to some whistleblowers I was told that all they can do is observe and listen and that the future is out of their control. Baloney. They have forgotten, "All that is needed for evil to prosper is for people of goodwill to do nothing". Whistleblowers must be proactive. They should not allow themselves to be setup - every suspect person has to be checked and tagged.

From experience, Whistleblowers may be neutralised in other ways, e.g. setting up a bogus competitive organisation, etc. I hope that the publication of these facts will now put the organisation on the alert, although I believe many members are aware of the dirty tricks used in cover ups of scandals.

Although I have not been circuitous or used euphemisms, it is crucial to the future of the organisation to look out for the bogus operator, e.g. the so called intellectual dissenter who doesn't even join Whistleblowers, etc. □

Walking the tightrope of ignorance

By John Wagner

"Never underestimate your opponent" is a pep talk favourite of American coaches.

"Never underestimate the ignorance of your opponent" should be a warning heeded by anyone thinking of becoming a whistleblower. Invariably, the longer I oppose a proponents of a clearly illegal practice, the less corrupt and more ignorant they seem to me.

Corrupt means the person(s) has mens rea, which is the knowledge and intent to commit a crime. Unless you are a mind reader, it becomes difficult to assume a person's actions, words and/or writings were performed with knowledge they were a crime or with an express intent to commit a crime. An excellent example is the success the East German police had in passing lie detector tests with flying colours in spite of

committing all sorts of atrocities. They sincerely believed what they were doing was legal and principled.

Ignorance is the lack or want of knowledge of the law. Therefore they cannot form the requisite intent to violate the law. Other words to describe ignorant behaviour are: unfamiliarity, unconsciousness, blindness, unawareness, confusion, unenlightenment, perplexity, incomprehension, stupidity, innocence, lack of learning, illiteracy, obtuseness, lack of perception, naivete', and uninformed. Two other words, dumb and dumber, were popularised by actor with the highest grossing films the past two years, Jim Carrey. Over a billion dollars were paid by the public to laugh at Carrey's mud dumb personae.

Whistleblowers in general are too quick to acquit their opponent of

ignorance. Instead they tend to assume their opponent is corrupt which usually acquits them of any wrongdoing. Let me try to explain why it is smart to portray your opponent as ignorant and dumb to accuse your opponent of corruption.

If you accuse your opponent of corruption you become a dobber, or, in America, a rat, fink, canary, snitch or squealer. If you accuse your opponent of being ignorant or stupid, you have a better chance of saying, "he dopped himself in". Your entire case depends upon what happens when you first discover the acts and how you characterise them when you first report them.

In America, complaints about Federal Government violations must be approved by the US Department

(Continued on page 16)

of Justice, Office of Attorney General before they can be investigated by the Federal Bureau of Investigation (FBI). Local and State matters must be reported to the local police or county sheriff. If you walk into an FBI office with a complaint they will listen and write down what you tell them and then check you out. Then they contact the US Attorney General's office for permission to investigate. Recently, there have been budget freezes and cuts which prevent them from investigating new matters. Thus it becomes important to fit your matter into an ongoing investigation or an organised crime matter which may support smaller budget cuts from the US Congress.

When the Feds are conducting an ongoing investigation and your complaint interferes with their orderly process, they will generally not investigate it. This is especially true if the complainant has a prospective advantage involved such as keeping one's job or saving the government money. You will likely be referred to a civil solicitor the minute you give them an excuse to deem your complaint a personal or business dispute.

Local police and sheriffs are generally interested in violent or common crimes such as car theft. White collar crimes, or, crimes involving persons or entities with budgets for legal defence are often beyond local law enforcement's professional competence or budgets. They generally refer these types of complaints to a solicitor for a civil complaint. Of course it is easy to interpret incompetence and budget shortfalls as corrupt practices. Then again, Americans are taught from the crib that "you can't fight city hall."

Assuming your complaint falls within the government's parameters of investigation, you must be very careful not to accuse any person acting on behalf of the government in an official capacity of corruption. Sovereign or governmental immunity prevents the government or their employees from being sued. American exceptions to immunity include lawsuits for discrimination or harassment of other governmental employees. Rationale for governmental immunity is that it would be most difficult to recruit employees for the government if anytime someone has a complaint about the performance of their job they could be subject to

litigation.

If your initial complaint focuses only on incompetence, the various federal and local criminal investigation arms of the government are completely avoided. At least your complaint will survive the much stricter tests of budgets, conflicting investigations and prospective advantage to the complainant. You will be entitled to various civil and human rights protections, and, conversely, entitlements. When you request or subpoena records and individuals, they will not, out of hand, be subject to the Fifth Amendment to the US Constitution protections against self incrimination.

Before you blow the whistle, try to give your opponent every benefit of the doubt that they could just be ignorant. Exhaust every grievance and administrative procedure. Evaluate your strengths and weaknesses, especially the support level from potential witnesses in event of litigation. Expect attacks on you personally and professionally the closer you are to exposing your opponent. If you begin with criminal allegations you can expect retaliation immediately.

Try walking the tightrope of ignorance as long as possible before you land in the criminal arena. □

New whistleblowing book out!

By RAYMOND HOSER

Smuggled-2 – Wildlife Trafficking, Crime and Corruption in Australia, the long awaited sequel to *Smuggled-The Underground Trade in Australia's Wildlife*, by Raymond Hoser has been released. As with Hoser's previous two corruption books, dishonest government officials have attempted to have *Smuggled-2* banned.

Officials from Queensland National Parks and Wildlife Service have sent several letters to the author telling him not to publish the book. This has also been backed up by a series of false and misleading media releases emanating from people adversely named in *Smuggled-2*. The New South Wales National Parks and Wildlife Service have gone much further. They have directly applied pressure on the book's distributor, Tower books, making them pull the pin on distributing the book through the book trade. At the moment it seems likely that this book will not be available through bookshops in Australia.

This follows on the heels of similar pressure applied on the same distributor by the Victoria Police to stop distribution of *The Hoser Files* by Tower books. As a result it has been effectively withdrawn from sale by bookshops throughout Australia.

Smuggled-2 is NOT a book about animals or wildlife. Wildlife is merely the dominant commodity being traded by those named in the book. The subject commodity could just as easily be tins of baked beans, guns, drugs or whatever. Instead *Smuggled-2* is a book about corruption in government and whistleblowing. *Smuggled-2* documents case after case of whistleblowing in government by both officials within these departments, investigative journalists and others. *Smuggled-2* reports a vast number of corruption stories that were either too hot to handle or written by reporters, but later spiked by editors following pressure by the corrupt people named. *Smuggled-2* details what happens to whistleblowers, including harassment, job losses,

financial ruin and even some whistleblowers who paid the ultimate price they were brutally murdered. *Smuggled-2* goes on to show how and why the killers have not and will not be brought to justice for the crimes they've committed.

Within *Smuggled-2* are details of bribery, corruption (in numerous forms), phone tapings, arson, murders, a huge number of allegedly disgraced ex-cops working for wildlife departments in NSW and Qld. and illegally trafficking in fauna, drugs and weapons as well as numerous illegal armed raids, cover-ups, fixing court cases, frauds, unlawful shredding of documents, bureaucratic mismanagement, severe and entrenched corruption within the ICAC/NSW and the CJC/Qld., etc.

For those who have not yet read *Smuggled*, some reviewers comments included the following;

"Reads like a thriller" – Vitali Vitaliev. *The Age*.

"The book details the involvement of NPWS. officers in the illegal interna-

tional trade in Australia's wildlife" – Karen Fredericks, *Green-Left Weekly*. "Smuggled is an appalling indictment of the system that is supposed to protect and conserve Australia's Wildlife" – Tom Burgess, *The Reptilian Magazine* (UK).

"Smuggled is a thorough work" – Kevin Hingley, *Herptile* (UK).

"Read Smuggled by Australian author Raymond Hoser as soon as it becomes available ... Hoser's book is a gold mine of information" – Shirley McGreal, *International Primate Protection League News*.

"This act of censorship is an attack ... NPWS is ... abusing it's position as a publicly funded authority" – Robert

Pullan, Chairman of the Australian Society of Authors.

"Raymond Hoser ranks as one of those rare individuals with a genuine concern about corruption and injustice and his admirable book, *Smuggled-The Underground Trade in Australia's Wildlife*, reflects his intuitive insight into what is wrong in Australian society" – Bob Bottom, author of several best sellers about organised crime in Australia.

Smuggled-2 has 280 pages, over 100 illustrations and is a detailed work. It is an all new book and does NOT repeat case material detailed in *Smuggled*. Those who have read *Smuggled* and found it enlightening, will want to get hold of a copy of

Smuggled-2. It is printed on higher quality paper than *The Hoser Files* so as to allow superior reproduction of the many illustrations.

Smuggled-2 costs \$24.99, and if ordered by mail, postage is free. Copies can be obtained by sending cheques or money orders to Kotabi Publishing, PO Box 599, Doncaster, Vic, 3108. Copies of *Smuggled* and *The Hoser Files* can be obtained at \$19.99 (post free) from this address also.

Further information can be obtained from the Corruption Fighters Home Page on the Internet at <http://www.kew.starway.net.au/~ader/>. □

A case study of the media treatment of a whistleblowing

By PETER MCGREGOR (Media Studies, Faculty of Humanities & Social Sciences, University of Western Sydney, Nepean, June 1996). (*This material was initially presented at the 'Beyond Whistleblowing' Conference, 29-30 June 1996, in Melbourne.*)

This is not meant to be a definitive 'reading'/de-construction of the attached story, merely my point-of-view/reading. Different readings may be compared on how coherently they articulate their de-construction of the story.

The story's immediate context

The day before *The Age* had run a front page scoop on the tape that Konrad had just released to them. Complementary articles on ps. 1 & 6 draw attention to the absence of both Police Commissioner Comrie & Deputy Church from the McGrath press conference. Other articles on p.6 refer to Kennett rejecting an independent inquiry; the significance of 'supercop' McGrath acknowledging the corruption; extracts from the tape; & a chronology of recent similar allegations (highlighting *The Age's* role). The editorial on p. 11 acknowledges a Royal Commission may be necessary

News Values For any event to be turned into a news story, journalists utilise various 'news values' as angles by which they construct the event into 'the story'. For *The Age*, the issue of police corruption has had a high currency (CONTINUITY (paragraph 3)); yet the combination of "police" being "corrupt" provides a nominally EXTRAORDINARY aspect(pl); & then there's confirmation (i.e. more than mere allegations ?) of the corruption by the second top corruption fighter in the (Victo-

rian) force (ie., PERSONALISING an ELITE/ POWERFUL/ PRIMARY DEFINER, pl-2). There's the NEGATIVITY (of corruption); the references to CONFLICT(e.g. 22-3) & (potential) VIOLENCE(4,9,27-9), that constitute quite a DRAMA(e.g. 4). For Victorians it is both PROXIMATE & IMMEDIATE (the Press conference was "yesterday" (1)).

The Age can thus be seen to ably utilise many news values to present this story as if it's another front-page exclusive, necessitating a whole page of context (p.6), & justifying a strong editorial position on the general issue that the story instances.

Agenda

What is this story's 'agenda', its point-of-view, on the issue it is covering ? Namely that "the corruption within"(heading for the whole of page 6), is not just considerable but has now been admitted to be so by "the force's untouchable"(page 6 story, headline reference to McGrath). To evaluate the agenda I'm using a system of analysis developed by Jalbert(1983).

Membership categorisation

What (groups of) people play a role in this story ? I believe the most vital dichotomy is between those who support an independent inquiry (Konrad (& presumably any other such whistleblowers ?)), the Council

for Civil Liberties(CCL) & the Federation of Community Legal Centres(FCLC)(17-8)); & those who don't (Kennett (19). And would it be unfair to group Freckelton(3 1-2) & Perry (he certainly emphasises the depth of the problem (7-9)), with the former; & McGrath (recommending merely "education of young officers...to prevent corruption"(26)), Comrie & Church – & presumably the "brotherhood" – with the latter ? So, while the "brotherhood" are obviously the villains, how do we categorise the 2 'sides' ?

Figurative Language

There are 2 key uses of figurative language: a "brotherhood" conjures up & connotes – beyond the mere denotative description of what it literally does: namely, "protect & encourage corruption"(1) – images of a tightly organised (like kin) group, a sub-cultural gang, echoes of a 'mafia'/godfather type CRIMINAL(!) network. Then there's the somewhat equivocal use of "whistle-blowing": either to dob on your mates(9), or to speak out against some evil(4,21). While the "dangers"(9), "difficulties"(24) & "harassment"(27-9) of whistleblowing are acknowledged, little is articulated in its favour (28-9). Also, in this instance, the contrast is between a group (brotherhood) & an individual (Konrad) – the use in this article of the category of

whistleblowers perhaps underemphasises the risks/bravery involved. And Konrad has now also 'blown' on McGrath... (Other figurative expressions include the euphemisms of "serious problems" in the force(2), & the harassment of Konrad being "unfortunate"(29).)

Transformation of allegations into facts

To me, the heart of this story is this: McGrath is IN CHARGE OF investigating corruption. So if he "confirms"(admits) it, it surely means it's a FACT. Not only do a variety of other sources back up the 'allegation' (of corruption) – Perry, CCL, TCLC, Freckelton – let alone Konrad – but no one denies it: whether Kennett ("confidence in existing mechanisms", which according to McGrath do seem to be in tatters), or Comrie/Church (sure, "only serialised the allegations...", but ...). People in authority (governments, police, landlords, bosses, parents, teachers, etc.), don't lightly acknowledge situations that are critical of them.

Making explicit the presuppositions

I'd suggest that the implicit assumptions of this story, of journalists Hughes & Ryle, & of The Age are that the corruption is considerable, that it's out of control – Kennett's "existing mechanisms" (McGrath's internal investigations department) have failed (consider 20-3) – & that there's an urgent need for an independent inquiry. So the category of those exposing the corruption &/or supporting such an inquiry like The Age – are the heroes of the piece; & those in the other category are engaging in crisis management, & are in effect "alibis of power" (Vaneigem, 1983, p.48-51). Without the "third force" of the likes of Konrad (Vaneigem, 1983, p.57-63), the "unresolved antagonisms" of "the joke", between for instance, the brotherhood (& the criminal community in general ?), & those "honest" cops who turn a blind eye, rather than blow the whistle (see the tape extracts, p.6), will continue to "fester"(Vaneigem, 1983, ps. 57 ff). To support my claim (allegation!) that McGrath is engaged in crisis management I note the shift from him on the tape to him in this story: "PERHAPS corrupt"(5), 'No, not the SENIOR officers! And no, it couldn't hap-

pen here...' (6), "perhaps not at the level in other states"(10), "...but one never knows"(11), "99.9% of police were trying to do 'a fair enough job' & ... more serious matters."(26-9)

How are we as readers positioned by this story ?

Has The Age adopted the adversarial, fourth estate, watch-dog role towards authority – in contrast to Herman & Chomsky's(1988) model where the media (usually) mobilise support for dominant interests (in this case the police & the government) ? Whose agenda/interests are being articulated in The Age's constructions around the issue of police corruption (not just in this story) ? (This is not to say that those constructions don't hold some validity, credibility, etc.) By positioning its readers to implicitly – accept the case for a Royal Commission(RC), is The Age itself acting as a "third force" ? Namely, where would we – the public – be without media like The Age breaking stories like this, looking out for our interests ?

Epilogue

Konrad, who has been fined \$1,000 for speaking to the media in September 1995, remains on unpaid sick leave. There's been no disciplinary action taken on his releasing the tape. The Police Union has terminated his membership to the fund that was supposed to support him until his Work Care case. One of the journalists who ran the initial story in September 1995 was new to police rounds. He was promptly rung by the Victorian Police Media Liaison Unit & told: "We know who you are". While no independent inquiry(RC) has been established yet, a massive investigation of the window racket, (involving 800 Victorian police), continues(SMH, 25 March, 1996). Kennett & some of his Ministers have banned the 7.30 Report(ABC), The Age & most recently Channel 7's Today Tonight from press conferences & interviews. (This ban specifically includes Gerard Ryle.) □

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 Jalbert, P. "Some Constructs..." in *Language, Image, Media* (1983).
 Ryle, G. "Corruption claim in Victorian Police", *SMH*, 25/3/1996
 Vaneigem, R. *Revolution of Everyday Life* (1983). □

WBA contacts and meeting details

Australian Capital Territory

- Shane Carroll 06 231 2498.

New South Wales

Central West (Forbes, Orange, etc)

- Dick Lodge (068) 51 1593.

Goulburn

- Rob Cumming: 018 483 155.

Sydney

All meetings at the Presbyterian Church Hall, Campbell St, Balmain.

- General meetings are held on the first Sunday of each month beginning at 1.30 p.m., preceded by eats (e.g. sausage sizzle) at 12.30 p.m., and followed by coffee and bikkies etc.

- Sharing and Caring meetings are held every Tuesday beginning at 7.00 p.m.

- President: Cynthia Kardell, 9484 6895; secretary: Alex Tees, 014 415 835.

- NSW Committee e-mail address: 100254.1467@compuserve.com

- Phone 365 1723 or 281 9743.

Wollongong

- Brian Martin: 042 213 763.

Northern Territory

- Phillip Nitschke 089 322 500.

Queensland

- General meetings of the Whistleblowers Action Group (which has strong links with WBA) are held on the first Tuesday of each month commencing at 7.30pm.

- Greg McMahon, (07) 3378 7232 a/h

South Australia

- Jack King 08 278 7853.

Tasmania

- Meetings are held in Hobart the first Sunday of each month at 1.00 p.m.

- Isla McGregor 002 391 652.

Victoria

- General meetings are held every fortnight on Sundays at the Unitarian Church, 101 Grey St, East Melbourne, beginning at 2.00 p.m.

- Peter McCartney, (018) 171714 or Keith Potter 03 9570 2371. □

Faith in ICAC's back-up queried

By NATHAN VASS

The Independent Commission Against Corruption was failing to protect whistleblowers, leaving them to be "hurled" in the workplace once they were identified, it was claimed yesterday.

The criticism, from the NSW president of Whistleblowers Australia Incorporated, Ms Cynthia Kardell, came after the ICAC called this week for the strengthening of laws protecting disclosures of corruption by Public Service whistleblowers.

A report by the NSW parliamentary committee on the Ombudsman calls for a new public disclosures unit to be established in the office of the Ombudsman, rather than under ICAC jurisdiction.

Government sources suggested the ICAC's public statements to beef up the laws were part of a "turf war" between it and the Ombudsman's office over the whistleblower unit.

Ms Kardell said the ICAC had a low standing in the eyes of whistleblowers, who wanted the new public disclosures unit to rest with the Ombudsman's office.

She said the ICAC offered virtually no feedback to the whistleblower once a disclosure of alleged corruption had been lodged. In most cases, whistleblowers were soon identified in the workplace, leaving them open to reprisals.

The ICAC, by law, did not have to say for six months whether it would investigate the complaint, by which time the whistleblower was "dead and buried" in the workplace, Ms Kardell said. "We need the relevant authority - whether the Ombudsman, the ICAC or the Auditor-General - to be proactive, to stand up to employers and tell them to leave the whistleblower alone."

An ICAC spokesman said last night the commission "has received far more protected disclosures than the Ombudsman, demonstrating the public's acceptance of our role."

It's a bit rich, judge

As one who was intimately involved in the establishment of the Police Royal Commission - as John Hatton's adviser - I am extremely concerned at Justice Wood's comments in the US on the role of the media. He said that commentators and "journalists who continually criticise the police service really had no hard facts" (*Herald*, October 1). He is wrong on two accounts.

First, it is not the job of the media to assemble a brief of evidence but rather to raise issues that are firmly founded in fact. Is the judge really saying that the issue of police corruption raised by the media before the commission was not founded in fact?

Second, the royal commission itself has been remiss in not establishing some "hard evidence" in cases raised by the media that were critical to its establishment.

The case of the murdered Kings Cross journalist Juanita Nielsen was the subject of a lengthy and factual article in the *Herald* (November 10). The police handling of this investigation also formed a critical part of the speech made by John Hatton that led to the Royal Commission. Yet neither the police nor the commission have collected any further evidence in spite of a wealth of material made available by an inquest and an inquiry by a Federal parliamentary committee.

It is a bit rich for the learned judge to criticise the media for not providing "hard evidence" when his own inquiry has established that the judiciary has been cheerfully sending citizens to jail on the basis of perjured police evidence without apparently noticing it.

Arthur King,
Rozelle.

A role to pay in corruption

NSW police royal commissioner Justice James Wood is the latest in a long line of people eager to tell the media how to do their job.

The media does not suffer from any lack of advice. They are constantly told they should contain less violence, more women's sport, less on Princess Di, more on mainstream Australia and so on.

Justice Wood wants the media to do more to expose corrupt police. Perhaps someone should explain to Justice Wood and his fellow critics that the job of the commercial media in contemporary Australia is to make money for their owners.

Like all other commercial enterprises, the media is under constant pressure to maximise returns to shareholders. According to the prevailing ethos, anything that gets in the way of this objective should be jettisoned.

As a result, if the time consuming and legally difficult job of exposing corrupt police doesn't make money, then there is no reason for the media to do it. Although many members of the community, including Justice Wood, apparently find this unsatisfactory, media companies flout the rules of the marketplace at their own peril.

Many editors and executive producers believe they have an obligation to commit resources to stories which add nothing to the bottom line. Every time they do so, however, they run the risk of being punished by the financial markets and ultimately replaced by someone with a stronger commitment to making money.

There may be occasions where putting in the enormous effort needed to expose police corruption will pay dividends in terms of higher circulation or ratings. Generally, however, this does not appear to be the case.

The growing financial pressures on the media have been recognised by expatriate Australian journalist Phillip Knightley, who was a prominent member of the Sunday



By BRIAN TOOLEY

Times Insight team, which beavered away two or three decades ago exposing scandals such as the role of the drug thalidomide in birth deformities.

These days, Knightley says the high cost involved is one of the main reasons *The Sunday Times* no longer gives a team of journalists six months to come up with this type of expose.

It is always possible the ABC will continue this tradition in Australia. The chances of it doing so, however, have not been improved by the \$70 million budget cut it faces. Nor has it found that a

6 Masters was mired in legal actions for six years

commitment to journalistic scrutiny is usually the best way to win a budget reprieve.

In a speech to a US crime conference last weekend, Justice Wood singled out *The Moonlight State*, an ABC *Four Corners* program by Chris Masters on police corruption in Queensland, as a good example of the role he would like to see the media playing. The program undoubtedly deserves the praise - it led to the establishment of the Fitzgerald royal commission which revealed that corruption reached right up to the then Queensland Police Commissioner Sir Terry Lewis.

But Masters was given six months to make *The Moonlight State* - a luxury which is unlikely to recur in the light of the calls from Communications Minister Richard Alston for the ABC to be run in a more business-like fashion.

Masters is also extremely reluctant to embark on similar projects in future. In a recent

speech, he explained that some investigative programs had left him mired in legal actions for the next six years.

While the ABC may cut back, new media outlets such as pay TV and the Internet are most unlikely to take up the slack. The local pay TV news service in Australia, for example, does not employ reporters. It takes its news feed from

established TV stations.

In the case of the Internet, there are no signs that content providers can afford the expensive and legally risky task of committing the resources, they are rarely likely to come up with the sort of "hard evidence" which Justice Wood says journalists have failed to provide about police cor-

ruption over the years.

While Justice Wood's desire to see the media become a more effective "watchdog" against corruption is commendable, the commercial imperatives are moving in the opposite direction. Unfortunately there are no signs this is about to change as a result of the Government's departmental review of media policy announced last week.

Shot at the messenger is worth investigating



Justice Wood's criticism of the media over police corruption spotlights a declining role of investigative journalism.

IN A speech delivered on the weekend to a policing conference in the United States, Commissioner James Wood openly criticised Sydney's media for their failure to produce hard evidence of corruption within the NSW Police Service.

He contrasted their poor track record with the situation in Queensland before the Fitzgerald inquiry where "a current affairs TV program... produced some hard evidence sufficient to justify a royal commission".

Wood was referring to the 1987 program on *Four Corners*, entitled *The Moonlight State*, produced by the (Sydney-based) television journalist Chris Masters. In fairness, he should have added the dogged efforts of a *Courier Mail* journalist, Phil Dickie, over a period of several years in exposing Queensland's corruption problems.

Is Wood saying that Sydney's media have abandoned the role which they have long played in exposing the corrupt and powerful to public scrutiny and in provoking governments to establish judicial inquiries?

In his 1985 memoir, the former royal commissioner Athol Moffitt acknowledged the part that Sydney's newspapers played in bringing about his inquiry into organised crime.

In the second half of the 1970s, the media played a key role in the establishment of the Woodward royal commission into drug trafficking and in 1980, the *Bulletin* journalist David Richards single-handedly provoked the Costigan royal

commission into the Painters and Dockers Union, even hiring containers and filming union riots himself.

To this, one could add the 1983 *Four Corners* program *The Big League* that provoked the Street royal commission, and if it were not for the efforts of Sydney's media - the *Sydney Morning Herald*, the *National Times* and the ABC in particular - then the Stewart royal commission into the early release scandal probably would never have eventuated.

Is Wood right? And if he is, then what has happened to Sydney's fearless tradition of investigative journalism?

As it turns out, Wood was not saying that media were unimportant in the establishment of his inquiry. In his speech, he acknowledged that his royal commission was largely brought about through the efforts of a small group of journalists and (in the written version of his address) commentators "claiming expertise in the area of policing". His criticism, as it turns out, was not that they were wrong about the scale of corruption in the NSW Police Service, but that, when pressed, they were "unable to produce hard evidence".

This is quite a different charge. Of course, journalists do not have the powers of a royal commission, and given his own admission of the past ignorance of Sydney's judiciary (himself included) about the nature of police corruption, Wood's criticism seems a harsh one.

It is unclear what opportunities the Police Royal Commission has given these journalists (and commentators) to come forward with evidence of corruption, and Wood does not seem to have considered the possibility that some of these people and their sources simply did not trust the royal commission enough to make the hard evidence available.

Moreover, his comparison with the circumstances which brought about the Fitzgerald inquiry overstates the role of the media in that case. While Chris Masters' program was the final catalyst for concern within the Government and the wider Queensland community had been building over several years. In 1985, the Queensland Director of Public Prosecutions, Des

Sturgess, had conducted an investigation into prostitution and child abuse.

While it was outside his formal terms of reference, Sturgess implied that widespread prostitution could only be operating without official police awareness if corruption was involved. Dickie built on this work and added to it his own research into the ownership of Brisbane's brothels. In short, *The Moonlight State* had the effect that it did because it fell on fertile ground.

Much the same applied in NSW in May 1994. John Hatton's motion to establish a royal commission was passed by the NSW Parliament only because of years of detailed and sometimes dangerous investigative journalism, supported by far-sighted and much-maligned producers and editors.

It is true that by 1994, Sydney's tradition of investigative journalism was in decline. And with the recent departure of Colleen Ryan to the United States, there is (in my opinion) only one group of investigative journalists presently at work in Australia - the team at Brisbane's *Courier-Mail* led by the reporter Paul Whittaker.

There are several excellent feature writers who are given the time and the space to dig deep and write robustly, but the tradition pioneered by Bob Bottom and carried on throughout the 1970s and 1980s at *Four Corners* and the *National Times* has passed.

If this is what Wood was saying, then his comments are deserving of close attention by Sydney's media proprietors, managers, editors and journalists. What is perhaps most disturbing about James Wood's comments is that he might be saying something else about Sydney's media.

While he was conducting his inquiry in Queensland, Tony Fitzgerald was sometimes inclined to interpret some criticism in the media as part of a broad conspiracy by the corrupt police.

It would be most unfortunate if James Wood were mistaking robust criticism of his royal commission (of which there has, indeed, been very little) in the same way.

Gary Sturgess was an adviser to the Greater Government and an architect of the ICAC legislation.

World Bank boss bans the bribe

Washington: World Bank President Mr James Wolfensohn has lashed out at corruption in industrial and developing countries, vowing not to tolerate it in the projects his organisation finances.

"Corruption is a problem that all countries have to confront," he told policymakers from the bank's 181 member nations. "We need to deal with the cancer of corruption."

By throwing the spotlight on a problem often out of sight in the past, the plain-speaking Australian-born banker risks

raising the hackles of developing nations that may view his broadside against bribery as just an attempt to meddle in their affairs.

In his address to the opening plenary session of the International Monetary Fund-World Bank annual meeting, Mr Wolfensohn sounded optimistic about the chances for making inroads against entrenched global poverty and helping the poor and the disadvantaged.

"They do not want charity; they want opportunities," he said. "They do not want to be

lectured to; they want to be listened to. When they are given a chance, the results are truly remarkable," he added.

The World Bank chief argued that corruption was a major barrier to economic progress in developing nations.

It also threatened to rob the bank of support in industrial countries as governments - and the voters who elected them - wondered if the money they had contributed was being squandered.

Mr Wolfensohn said governments that fight corruption

would, over time, attract the larger volume of investment.

IMF managing director Mr Michel Camdessus also took aim at corruption in his speech to the plenary session.

"Governments must demonstrate that they have no tolerance for corruption in any form," Mr Camdessus said.

Under new guidelines, the World Bank can cancel part of a loan if it determines that corrupt or fraudulent practices were involved in procurement contracts.

Reuter

HOW familiar does this sound? A small airline, which is in financial difficulties and which was set up to serve Lord Howe Island, crashes, killing everyone on board. The plane was overweight on take-off, flew without proper maintenance and was under the control of a single pilot who was unable to cope with an in-flight crisis. The civil aviation regulator knew the airline company was in trouble and was a frequent violator of safety regulations, yet did nothing to remove the threat it posed to public safety.

After the crash, millions were spent on a lengthy inquiry, the aviation regulator took on a new name and logo and the bureaucrats claimed all problems would be solved with the new organisation even though the personnel were unchanged.

Seaview Airlines, 1994? No, Advance Airlines, 1980.

People often talk about the good old days of the Department of Civil Aviation (DCA). It has been renamed countless times in the past 24 years. It is now called the Civil Aviation Safety Authority (CASA).

Memories are short, though. The good old days were not so good and, indeed, the seeds of today's problems were sown a long time ago. The DCA developed unaccountability to a fine art. It was not held accountable for the 1980 accident and we may be sure that CASA will not be held accountable for the 1994 accident as it has astutely changed its name since then. The same people, the same legal framework, but with a new name and logo, and accountability evaded again.

The Advance disaster may have been forgotten by some. Thirteen people were killed when a small twin-engine turboprop departed Sydney Airport on February 21, 1980 and crashed into the sea wall of the main runway. It is extraordinary that the uncanny similarities between the Advance and Seaview disasters have not been exposed to public scrutiny.

More importantly is the regulator's failure to learn anything from that terrible accident. Yet if we want to get any value out of the \$20 million said to have been spent on the Seaview Inquiry it's timely to focus on the Advance inquiry of over a decade ago.

The matters brought to light by the Advance Inquiry chaired by Sir Sydney Frost, QC, who reported in 1983, show how difficult a task the Minister, John Sharp, has in fulfilling his promise last week when he said: "This Seaview report will give us the reasons to have the biggest shake-up in aviation history."

THE SYDNEY MORNING HERALD
MONDAY, OCTOBER 7, 1996

Past returns to haunt the future



DICK SMITH

The Seaview Inquiry report is due for release tomorrow. But will it lead to better air safety?

I haven't yet seen the Seaview report by former judge Mr James Staunton but the comments by counsel for the CAA, Mr David Officer, QC, give me concerns over how much co-operation CASA will give the minister. Mr Officer's case was that while some of the CAA's practices were "unsatisfactory", it was really all a matter of limited powers and resources and "outside pressures". If Mr Sharp falls for that, another Seaview type of disaster is inevitable.

The Advance and Seaview inquiries are almost identical for the amount of buck shoveling done by a bureaucracy that has successfully remained almost totally unaccountable for decades to the public.

It is staggering to realise that Frost's major recommendation of 1983 has not been implemented.

If his recommendation for two-pilot crews on complex turbo props like the Seaview Aero Commander that crashed in October 1994 had been complied with, it is unlikely this accident would have happened as passengers would fly to Lord Howe Island on services like those provided by a Qantas subsidiary with multi-pilot crews.

More importantly, Frost was conundred on the matter of regulatory responsibility. After detailing a chilling sequence of failures by the regulator's officers to act against Advance over breaches of safety regulations, he let the senior bureaucrats off the hook by finding that they couldn't be blamed and were entitled to rely on field officers to bring to their attention any evidence of unauthorised practices. Those in charge were not held responsible, and this unaccountability has been entrenched in the regulatory culture. We have paid in blood for this lack of accountability.

Here are a few gems from Frost's 1983 report which I guarantee will have disturbing similarities with the Seaview report. "The deficiencies in the Advance maintenance documentation were so numerous that little would be gained by discussing all of them in detail."

"Signatures were missing from the maintenance book which had pages missing and sections whited out."

"It seems totally unacceptable that a company can talk its way out of reports especially when ...

significant parts of scheduled maintenance work were deliberately omitted."

Yes, they sound like extracts from the evidence presented to Mr Staunton in 1996 rather than Sir Sydney Frost in 1982.

Frost was also misled on the critical issue of a unique Australian flight manual which was specifically required by the Department of Transport for the use of Australian Beech Super King Air operators. This fatally flawed document deleted from the manufacturer's flight manual procedures a take-off flap setting that would have allowed the plane to climb more strongly than it did when it was crippled by an engine failure and would have very likely allowed it to make it back to the airport.

Frost found it probable the Advance pilot was flying an unauthorised reduced power take-off procedure known by the departmental officers which had come into widespread use but which they had failed to take any action to stop.

While it was icing as well as overloading that was very likely a major influence on the Seaview accident, there are alarming consistencies in the "blame someone else" culture of the bureaucracy to the accidents of two small airlines that killed 22 people.

Frost could not have anticipated, however, the future career paths of two airmen he names as having known of the unauthorised use of reduced power take-offs but who failed to have this

inherently dangerous practice stopped. Both received promotions. The departmental examiner of airmen responsible for Advance at the time of the crash, Mr Trevor Thomas, moved up through the bureaucracy and was appointed an expert adviser to last year's Morris Air Safety Inquiry. The former chief pilot for Advance, Barry Sargeant, moved to the Department of Aviation and subsequently became the Bureau of Air Safety Investigations chief investigator for the 1993 Monarch crash.

Just as in 1980 when the Minister for Transport, Ralph Hunt, and his top departmental bureaucrats had no practical aviation experience, there has been a successful campaign by the bureaucracy in the last decade to ensure that in nearly all cases those at the top have no real aviation expertise. Can you believe that at the time of the Seaview accident, CAA's chairman, also the chief executive and the manager of safety regulation had no aviation experience?

In the present CASA, such high-profile board members as chairman Bill Fisher and Mrs Gabi Hollows are strongly supported by the bureaucracy because they know little about aviation. They are capable people in their fields of expertise, but I have no doubt that as soon as they have acquired enough aviation knowledge to become effective they will not be reappointed.

Both Fisher and Hollows have refused a request by the prime minister to resign and make

for members with practical aviation experience.

Much has been made of the claim that the CAA was unwilling to regulate safety because of its desire to ensure the commercial success of the industry. This is demonstrably untrue. The CAA was a ferocious regulator but applied its ferocity quite wrongly. Its regulations provided specifically that the CAA would not be liable for the consequences of cancelling a pilot's or an airline's licence, no matter how wrongly it did so. No regulator could hope for a clearer statement that safety takes precedence over commercial success. CASA now enjoys the benefit of precisely the same legislation. Neither organisation has ever had the slightest hesitation about exploiting that power. The problem is that both organisations use their powers against little people, the pilots and engineers who are the industry's infantry, while the proprietors and senior management escape. This is as illogical as trying to prevent war crimes by punishing the frontline troops who did what they were told, instead of the generals who did the telling.

The CASA may have a new name; however, the culture of unaccountability remains. While there are many good and dedicated professionals in the organisation craving for strong leadership at board level, until this happens it is inevitable that more Advance and Seaview-type accidents will occur.

Dick Smith was chairman of the CAA from 1980 to 1992.

SUN HERALD
2/10/96
MAILBAG

Don't shoot the messenger

IT often angers and saddens me, as one of the victims of child abuse at the hands of the Christian Brothers at institutions in Western Australia during the 1940s and 1950s, that Father Brian Lucas, spokesman for the Catholic archdiocese of Sydney, always seems to take a very Pontius Pilate attitude whenever the sins of the Church are

exposed in the media, such as *The Sun-Herald*. Don't shoot the messenger. The days of the three monkeys - hear no evil, see no evil and speak no evil - are dead and buried with a very concerned and troubled community.

JOHN HENNESSEY, State president, Australian Faith & Heritage Society, Campbelltown.

Straightening out the law

IT is one thing to have Opposition politicians and commentators running on about the faults of our society - that is to be expected - but it is something a bit different when persistent criticisms emerge from our most senior judges.

This is particularly so given the historically reticent nature of our senior judiciary and, indeed, the socially conservative bent of its judges.

They have tended to sledge with some horror the nature of the senior American courts, in which judges actually assume that it is their duty to pursue social aims that are sometimes hardly distinguishable from plain old-fashioned politics. But this mould is being broken.

It is only two or three weeks since a former High Court judge,

Sir William Deane - now Governor-General - made headlines with a passionate denunciation of the way Australia treated its Aboriginal population.

Last week, Chief Justice Sir Gerard Brennan said bluntly that the judicial system was in crisis. Admittedly, like many whistleblowers these days, he seemed to be partly motivated by cuts in government spending on the judicial system. But he also stressed that litigation these days was limited to the wealthy, to business and to those receiving legal aid.

"It is not an overstatement to say that the system of administering justice is in crisis," he said.

There are thousands of Australians who are all too sadly aware of this; the option of seeking legal redress over mistreatment, care-

lessness or plain oppression is simply rejected because it is accepted wisdom that ordinary people are crazy if they let themselves fall into the hands of lawyers.

Moreover, you don't have to be an ordinary citizen to find this out. The problems which various ombudsmen have in calling government organs or the police to account are recounted in depressing detail in their annual reports.

The idea of the ombudsman as a government official charged with protecting the interests of citizens against oppression by government was originally borrowed from Scandinavian countries.

Australian governments usually feel that they have done their duty by wronged individuals simply by providing an ombudsman's shoulder to weep on.

No need, of course, to follow up any recommendations, particularly if they impinge on delicate areas.

The ombudsman was one failed attempt to provide some kind of alternative to expensive lawyers.

Sir Gerard Brennan suggests, among other things, that the need for expensive litigation could be ameliorated by greater use of mediation. It is an idea which has been promoted vigorously in the past by former NSW Chief Justice Sir Laurence Street.

But without being too sceptical of the solutions proposed by these eminent jurists, a major part of the problem in reality is caused, not by the lawyers, but by the law.

Simpler, clearer, more focused laws would obviate much litigation and free many people from the clutches of the legal profession.

Letters

The contagion of 'The System'

YOUR ongoing coverage of the shredding of the Heiner Inquiry documents is a matter of service in the public interest for which you should be commended most unreservedly. I applaud your tenacity which I deeply hope will be ultimately vindicated ... indeed in the interests of decency, democratic fundamentals and justice MUST be vindicated.

You obviously have a firm grasp of the implications of the issues involved - "big oaks from little acorns grow" and "oh what a tangled web we weave ...". This is surely the lesson of Watergate in the USA and Alfred Dreyfus in France. The principles are the same, only the time, place and faces change.

Your sentiments of disdain of those who have betrayed positions of trust and responsibility in order to keep "The System Network" intact are well placed. What started out as an attempt to screw a relatively junior public servant - a common enough event - has inexorably and yet incredibly grown into a mire that implicates a plethora of other people from all levels of public life who have been less than honest.

This is the real stuff that makes for good investigative journalism.

Les Kelly
Kingsmeadows, Tasmania

Whistleblower 'was blackballed'

Paul Murphy

DAVID Threlkeld, the American trader who warned the London Metal Exchange five years ago that Yasuo Hamanaka might be falsifying his accounts at Sumitomo, was "blackballed" by the London metal trading community, according to the head of one metal-trading firm.

which people didn't want answering. He was side-lined, shunned, and it was none to subtle," said the broker, who asked not to be named.

"We knew the LME itself did not like him and we knew the market's biggest player didn't like him, either. The natural extension was that you stopped doing business."

Mr Threlkeld, who still runs a small metals trading operation based in Vermont, wrote a letter - reported in

the Guardian on Saturday - to LME chief executive David King in November 1991, explaining how Mr Hamanaka was creating false records for 80,000 tonnes of copper worth more than \$200 million.

Through his firm, DLT, Mr Threlkeld was an associate member of the LME until 1992, when the British end of his dealing operation, DLT (London), folded.

Mr Threlkeld said in a statement yesterday: "By ex-

pressing my concerns I was hurt financially. I tried to make contact with Sumitomo [again] earlier this year to discuss our outstanding business problem."

"I was unable to discuss the situation with Sumitomo directly, although I did receive a communication, asking me to elaborate on my concerns, from their New York attorney DLT & Co. Inc. I have retained counsel and we are trying to resolve the matter."

The Weekend Independent
p. 4 (9 August 1996)

Diplomats' child sex inquiry in doubt

By CRAIG SKEHAN

Foreign Affairs Correspondent

The Federal Government's inquiry into allegations of pedophile activities by officials and former officials of the Department of Foreign Affairs and Trade may be in jeopardy if a disqualification application succeeds today in the Federal Court.

The action, taken by suspended departmental whistleblower Mr Alastair Gaisford, seeks disqualification of the inquiry's head, former deputy ombudsman Mr Chris Hunt.

Legal sources said the disqualification of Mr Hunt could lead to the aborting of the \$1 million inquiry set up in May by the Minister for Foreign Affairs, Mr Downer.

They said while files and other background material might be useful for any new inquiry, witnesses and other sources of evidence would need to be retested.

The disqualification action was taken following publication of an article in the *Canberra Times* on August 28 this year which quoted "sources close to the inquiry" as saying no startling new evidence had been found of pedophile activity in the department.

It stated that evidence given since Mr Downer established the inquiry in May had dispelled allegations of a "gay Mafia" among diplomats.

The application filed in the Federal Court seeks the disqualification of Mr Hunt on the grounds there is now a reasonable fear of bias arising from his pre-judgment of the issues.

Following publication of the newspaper article, complaints were made to Mr Hunt through legal advisers to Mr Gaisford,

who previously served overseas as a diplomat.

Mr Gaisford was suspended from the Department of Foreign Affairs in March after claims that he leaked to the media confidential information on alleged pedophiles and other matters.

He was to have given evidence to the Hunt inquiry, including on his claim of a departmental cover-up.

Sources said Mr Hunt and the secretary to the inquiry, Mr David Macgill, talked to Ian McPhedran, the *Canberra Times* journalist who wrote the article at the centre of the disqualification application.

Following the complaints, Mr Hunt gave assurances he had not reached any conclusions.

Despite the action to have his position terminated, Mr Hunt recently went on a fact-finding trip to South-East Asia to question witnesses on the department's handling of allegations that diplomats sexually abused local children.

It is not yet clear whether Mr McPhedran will give evidence on his version of the conversations with Mr Hunt and Mr Macgill.

Another scheduled witness to the Hunt inquiry is to put in an affidavit to the Federal Court hearing today expressing concerns over the running of the inquiry as reflected in the *Canberra Times* article.

The witness has already sought documents under Freedom of Information legislation on what the Department of Foreign Affairs knew about alleged pedophile activities of a diplomat who was recalled to Canberra from Indonesia without co-workers with young children being warned there was a potential danger.

Court told of envoy and boys

By CRAIG SKEHAN
Foreign Affairs Correspondent

An Australian diplomat recalled from Indonesia in 1984 amid allegations involving sexual activities with boys had subsequently shown a "sexualised interest" in a six-year-old boy in Canberra, an affidavit to the Federal Court stated yesterday.

The affidavit was filed in support of an application to disqualify Mr Chris Hunt, the head of an inquiry into the Department of Foreign Affairs' handling of allegations of pedophile activity by Australian diplomats.

A former department employee, Ms Angela Hanbury-Sparrow, said in the affidavit that she had become a friend of the diplomat, recalled from Jakarta, Mr Bill Brown, who had continued to be employed by the department.

In 1991, she was told by former Australian foreign affairs officials that Mr Brown had been involved "with sex, young boys and pornography" in Indonesia.

In June this year, she had contacted the Hunt inquiry and offered to give evidence.

Ms Hanbury-Sparrow became

aware of an article in the *Canberra Times* of August 28 and formed the view that it was intended to "soften up the public for the inquiry's eventual findings".

It had indicated to her that the inquiry did not have an "open mind", and if she gave evidence of an inadequate departmental response to the activities of Mr Brown, it would not receive objective consideration.

The Federal Court was told yesterday the Government should consider a royal commission if the application to disqualify Mr Hunt from the current lower level inquiry succeeded.

Barrister Mr Chris Erskine was representing suspended department whistleblower Mr Alastair Gaisford, who made the disqualification application.

Justice John Mansfield said he expected to hand down his decision later this week.

The *Canberra Times* article quoted "sources close to the inquiry" as saying no "startling" evidence had emerged, there had been no evidence of a "gay mafia" in the department and that some allegations may relate to Asian men looking younger than their real age.

Until now, all proceedings

before the Hunt inquiry have been kept secret.

However, Mr Erskine in the Federal Court yesterday entered into evidence a transcript of proceedings on September 2 in which Mr Hunt stated contacts with the media had been limited to "broad procedural or administrative information".

"Mr McPhedran [a *Canberra Times* journalist] did speak to me last week, he also spoke to a member of my staff," Mr Hunt said at the time. "To my knowledge, the only material he was given that he was able to present in any sense on the record were procedural matters."

Mr Hunt said when a complaint was made to him, he had immediately in writing given an "unequivocal assurance" that he had reached no conclusions on any aspects of his terms of reference.

Mr Ian Nash, representing the Commonwealth, noted that Mr Hunt had questioned the accuracy of the *Canberra Times* article. He also said that Mr Hunt had made it clear that he was keen to pursue new lines of inquiry based on subsequent evidence given and that any "preliminary views" could change.

Pedophile inquiry a shambles: Brereton

By CRAIG SKEHAN
Foreign Affairs Correspondent

The Federal Opposition says the government inquiry into allegations of pedophile activity among Australian diplomats has been irredeemably compromised, regardless of whether the Federal Court disqualifies its head on the grounds of bias.

The Opposition foreign affairs spokesman, Mr Laurie Brereton, maintained yesterday that the Minister for Foreign Affairs, Mr Downer, must accept responsibility for what had become a shambles.

However, Mr Downer said Mr Brereton was prejudging a court decision in an "inherently objectionable way".

The Commonwealth Public Service Commissioner, Dr Peter Shergold, issued a statement warning that there should be "restraint" in commenting on the disqualification application, which had not yet been determined.

Dr Shergold said he had established the inquiry under the Public Service Act and it was conducting a "full and thorough investigation".

The political row follows an application to the Federal Court for disqualification of the head of the inquiry, Mr Chris Hunt, following publication of a *Canberra Times* article dealing with evidence taken so far. The article quoted sources close to the inquiry as saying no "startling" new evidence of pedophile activity had been uncovered, and that some allegations could be the result of a homophobic vendetta.

Mr Hunt subsequently admitted talking to the newspaper, but said it had been off the record and claimed the article did not accurately reflect his views.

Mr Brereton said Mr Downer had promised a thorough investigation of pedophile allegations when he announced the inquiry in May. "The Australian public's reservations that the truth can ever be revealed through such a secret, behind closed doors, process must be gravely heightened by this sorry episode," he said.

Mr Brereton cited comments by the national director of End Child Prostitution in Asian Tourism, Ms Bernadette McMenamin, that Mr Hunt had referred to a homophobic vendetta when taking evidence recently in South-East Asia.

He called on the Prime Minister, Mr Howard, to immediately scrap the Hunt Inquiry and establish a royal commission.

Govt, Opposition clash over pedophile inquiry

A Federal Court decision yesterday not to disqualify the head of the public service inquiry into allegations of pedophile activity by Australian diplomats led to a clash between the Federal Government and the Opposition.

The Minister for Foreign Affairs, Mr Downer, said criticism of the decision by the Opposition Foreign Affairs spokesman, Mr Brereton, was "irresponsible and disgraceful".

Mr Downer said Mr Brereton had shamelessly refused to accept the clear decision of the court.

Federal Court Justice John Mansfield handed down his decision on an application by suspended Department of Foreign Affairs whistleblower Alastair Gaisford for the disqualification of inquiry head Mr Chris Hunt on the grounds of a reasonable apprehension of bias.

The action arose from an article in the *Canberra Times* quoting sources as saying some pedophile allegations could be the result of a homophobic vendetta. Mr Hunt later admitted talking to a *Times* journalist.

Mr Justice Mansfield ruled the article was not sufficient for an observer to have a reasonable apprehension that Mr Hunt would not keep an open mind.

□ CRAIG SKEHAN

No longer trustworthy

IT is time for a few of us to publicly support ABC whistleblower John Millard (Features, 30.7. Letters, 2.8).

I am a senior researcher in the ABC Features Department, currently on maternity leave. On the three occasions I was involved with programs involving financial support from other sources (in these cases government departments or their agencies) there were attempts made to influence the course of my research. This involved the selection of the story and the way in which the story was to be angled. I am in no doubt about this.

I reported this both to my superiors and to the Palmer Inquiry. The Palmer Inquiry found there was no attempt to influence, but it later emerged that government departments, as sponsors, were specifically excluded from Mr Palmer's terms of reference.

Millard is right: anyone who puts up money to the ABC, quite reasonably, expects to get some thing for it. Commercial operations expect to get more profile, government departments expect positive propaganda.

The community has the right to decide if it wants to fund the ABC adequately or whether it wishes to spend the money elsewhere. But if it decides on the latter, the community must realise that the ABC will no longer be entirely trustworthy. Senator Alston, who himself chaired an inquiry into the ABC last year, must know this quite well.

KATE ABRA
Epping, NSW

Weekend Australian
10th August 96

ABC whistleblower's film a winner

By TONY WRIGHT
ABC Television whistleblower John Millard's interviewing technique was once described by an ABC executive as "absolutely abysmal". Another executive said he needed a good producer.

Yesterday, a story reported and produced by Millard won the best television feature or documentary in the 1996

Michael Daley Award for Science, Engineering and Technology Journalism.

Millard took solace from the award, presented to him in Canberra by the Federal Minister for Science and Technology, Mr McGauran.

Millard, who lost his contract with ABC-TV early this year after he played a major part in exposing financial influence on

ABC programs produced by outside production companies, now works in the ABC's rural department. He refused a management offer to return to ABC-TV because he says he fears victimisation.

Yesterday's award - Millard's sixth - was a report on Buddhist monks in Korea who were transferring ancient scriptures to computer disc.

Comment
One would have thought that once accused of bias, Mr Hunt would have done the right thing - stepped aside and allowed someone not so accused to conduct the inquiry!!

Checking the crime bodies

THE Victorian and Queensland premiers' attacks on the National Crime Authority and the Criminal Justice Commission came to a head last week at the meeting of leaders of States and Territories in Melbourne. The question now is what good will come from the review which that meeting has sought of the NCA and other investigative bodies with broad powers, such as the Queensland CJC and the NSW Independent Commission Against Corruption.

Mr Kennett's steady denunciation of the National Crime Authority and Mr Borbidge's constant sniping at the CJC are both well recognised as less than dispassionate. It is unlikely Mr Kennett would have continued to attack the NCA with such fervour and persistence had the goal for his anger not been the strong personal feeling he has that his friend Mr John Elliott, recently acquitted of theft and fraud charges after a long, expensive but flawed investigation by the NCA, was badly treated. Similarly, Mr Borbidge's attacks on the CJC also carry a strong element of the personal.

Today the Queensland Cabinet is due to appoint someone to conduct a wide-ranging judicial review of the CJC's functions. That review has been denounced in advance by the Queensland Opposition Leader, Mr Peter Beattie, as a desperate move to discredit the CJC before it releases its report by the former NSW judge, Mr Ken Carruthers, QC, into the memorandum of understanding with the Queensland Police Union signed by Mr Borbidge and Mr Russell Cooper, now the Queensland Police Minister, before the Mundingburra by-election. Mr Beattie has gone as far as to predict that the Cabinet will appoint a "friendly" person to head the inquiry into the CJC.

These personal and politically charged attacks on the NCA and the CJC recall the violent reaction in NSW against the Independent Commission Against Corruption after it made an adverse finding against the former Premier, Mr Greiner. But a difference between then and now is that anger at the ICAC finding against Mr Greiner was channelled through the courts — which found in favour of Mr Greiner, though too late to save his political skin. Since then, of course, one of the main criticisms of the ICAC is not that it rides roughshod over people's liberties, but that it has gone too quiet, shifting its emphasis away from investigation towards public education.

In the history of public attitudes towards bodies such as the NCA, the CJC and the ICAC, questions of time, place and circumstance are crucial. At the weekend, Mr Kennett hinted at this. "I do not oppose", he said, "the concept of there being, from time to time, inquiries or royal commissions into issues of public importance or if it is identified, corruption... (but) I am terribly opposed to the setting up of permanent royal commissions in the way in which ICAC, CJC and NCA are set up."

That is the problem. The royal commissions — Costigan and Fitzgerald — which gave rise to permanent bodies — the NCA and the CJC — were serious attempts to deal with problems of crime and corruption the community rightly believed were not being dealt with by the usual agencies of law and order. The feeling at the time, that permanent bodies were required to prevent a recurrence of the circumstances which gave rise to the Costigan and Fitzgerald inquiries, has taken a battering. The political ramifications of some NCA and CJC inquiries have ensured this. But the fact that these bodies upset some politicians does not mean they should be abolished. More likely, they need to be strengthened, both in their efficiency and their accountability.

Justice Wood speaks out

IN A hint, presumably of what is to come in his final report, Justice James Wood has made in a speech in Washington interesting comparisons between his own royal commission's work and that of other bodies such as the Independent Commission Against Corruption and the Ombudsman's Office. He has made it broadly a story of success and failure.

Justice Wood's inquiry has been spectacular and very successful in exposing numerous examples of the worst kind of corruption in the NSW Police Service. Yet, from his own description of his methods, it is clear that their success depended on speed and surprise, if not luck. Early in its life the commission was helped greatly by the "roll-over" of a very experienced detective. "He was deployed by the commission," Justice Wood says, "to work under cover for approximately six months, and gathered evidence, via audio and video means, of the reception of bribe money from the vice operators and drug dealers who had been paying his group for years, and of the sharing of that money with other senior detectives, including a commissioned officer who for a time was his commanding officer." Justice Wood describes subsequent similar undercover operations as producing "a dramatic ripple effect and widening of the pool of corruption exposed".

Justice Wood deserves the fullest credit for the boldness of this approach. And his general criticisms of the ICAC, for example, for its "emphasis on corruption prevention and education in preference to investigation" are well taken. However, his criticism of the ICAC's "reluctance to employ surveillance or covert investigative techniques" — as his commission has done, presumably — is more problematical. As Justice Wood himself points out, the ICAC has been handicapped by having to use serving NSW police on secondment as investigators. And, as he also notes, Mr John Hatton, the Independent MP responsible for his own inquiry, made it a requirement that it use no serving NSW police as investigators.

While Justice Wood deserves full marks for boldness, he has had the benefit of others' experience — perhaps more so than his remarks in Washington managed to convey. Moreover, he implies but does not spell out as clearly as he might that his technique of using police who "roll over" to spy on their fellow officers might not be a very useful long-term anti-corruption measure. It worked beautifully, but only while the police under surveillance believed his inquiry was as amateurish as those that had preceded it.

Justice Wood has also criticised the role of the media in relation to police corruption. Rather than acknowledge the soundness of the warnings the media have given of the extent of police corruption, he complains about lack of specificity, or at least a lack of the same degree of specificity as was provided in a television program in Queensland before the Fitzgerald inquiry. "In NSW," Justice Wood says, "I have to say that the journalists who continually criticise the Police Service really had no hard facts." To that, journalists can say they have never had the powers of a royal commissioner to investigate and expose. More generally, it might also be said that in relation to this problem the media have not allowed themselves the complacency of the judiciary and the legal profession. Both have contributed over many years to the problems Justice Wood has now uncovered, by allowing corrupt police to pervert the course of justice through perjury and the verballing of witnesses. That is something he must also investigate if his inquiry is to be complete.

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