

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

The Whistle



DECEMBER 1997

NEWSLETTER OF WHISTLEBLOWERS AUSTRALIA INC

PO Box U129, Wollongong Uni NSW 2500; ph 02-4221 3763

Media Watch

From *Sydney Morning Herald*, 21 November 1997, p. 21

Fishing tale with a sad catch

Richard Ackland

Nearly 20 years ago Mehmed Skrijel was working as a cray fisherman in waters off South Australia. He had his own boat and crew and was doing very nicely.

However, he could not help noticing that other fishing boats were picking up mysterious containers in the water at night and he believed that drugs were involved.

He reported his concerns about drug importation to the police at Millicent, and thereafter his life took a terrible turn. He and his family received numerous threats and he soon found that he could not sell his catch in the local town. He took his complaint to the Costigan Royal Commission, but

before it could do anything to examine the matter it was wound up by the Hawke Government.

Skrijel's fishing boat was burnt and his house was destroyed by fire. In late 1984, nearly six years after his initial report to the police, he went to the then recently established National Crime Authority.

By this stage Skrijel and his family had moved to Victoria and he had purchased a small property at Digby, near the Weecurra State Forest. Soon he was publicly asserting that the National Crime Authority was more part of the problem than the solution.

In October 1985 the National Crime Authority mounted a raid on the Digby property and charged Skrijel with cultivation and possession of marijuana for the purposes of trafficking, possession of a quantity of explosives and possession of a pistol. On April 1, 1987, he was found guilty on all those charges and sent to prison for two years.

On appeal the Full Court found that

there had been misdirections to the jury, and made an order for a retrial. The new trial never took place because the DPP intervened in June 1989 and filed a no bill.

Skrijel ever since has asserted that everything that has happened to him since he reported his suspicions to police in 1978 has been interconnected and part of a conspiracy. He maintains that he was only convicted because the NCA fabricated evidence.

More than \$1 million of public funds must have been spent in various attempts to find the truth of the Skrijel case.

The previous Minister for Justice, Duncan Kerr, appointed the South Australian QC David Quick to report on the criminal charges against Skrijel. He reported in two massive volumes. One volume was confidential, for the eyes of ministers of the Crown only. However, what we do know is that Quick found that "there is substantial evidence upon which it is reasonable to raise a strong suspicion that evidence

was fabricated in order to incriminate Mr Skrijel on serious criminal charges involving drugs and explosives".

In relation to the charge relating to the pistol, Quick found that "there is sufficient reason strongly to suspect that some person in authority has carried out acts with a view to incriminating or otherwise causing harm to Mr Skrijel".

Quick recommended a commission of inquiry be established with coercive powers to conclusively investigate whether or not the NCA has a legal or moral obligation to recompense Skrijel.

Message from the acting editor

The Whistle has gone from strength to strength largely due to the work of two people, editor Lesley Pinson and managing editor Patrick Macalister. As editor, Lesley has solicited, revised and selected items for publication. Patrick has taken the contributions and used his production skills to fashion the final product. Due to unnecessary modesty, neither has wished their names to be published.

Unfortunately, neither has been available to produce another *Whistle* since the August issue. Lesley has obtained a paying job, thereby cutting deeply into her previous full-time unpaid work for WBA. Patrick has greatly increased work commitments. This explains the delay in the production of this issue and its changed appearance.

On 10-11 January 1998 there will be a two-day meeting of WBA's national committee, at which time we will be discussing editorship of *The Whistle*, among other matters. In the interim, I am editing this issue on an acting basis, with help from Isla MacGregor on the Media Watch section. For future issues, continue to send your contributions to PO Box U129, Wollongong Uni NSW 2500 (with computer disc if possible) or email to brian_martin@uow.edu.au.

In this issue, there are three main sections: Media Watch (items from the media and elsewhere); articles and reports; and WBA dialogue and debate. If you have comments about specific items or about the sort of things that should appear in *The Whistle*, let me or any other member of the national committee know. Your comments are also welcome for publication.

Brian Martin, acting editor

Kerr and the government at the time recoiled at this recommendation and instead referred Quick's report and findings to the Deputy Ombudsman (Police Complaints) in Victoria. The basis for this was that the NCA officers who it is alleged fabricated evidence against Skrijel were Victorian police seconded to the national crime body. The Deputy Ombudsman has now reported and it turns out to be another inconclusive document.

However, one matter where the Deputy Ombudsman was fairly certain that Skrijel's claims of fabrication were false was in relation to the gun. The Deputy Ombudsman had further tests conducted on the gun and one expert found that Skrijel's fingerprints were on the wooden stock of the weapon. Yet, the fingerprint certificate supplied at the trial found a print on the barrel of the gun. This change of location for the fingerprint is now another mysterious and unresolved issue.

The Attorney-General, Daryl Williams, has washed his hands of the matter, but that may not be the end of it. The Joint Committee of the National Crime Authority might show some interest in the fisherman who simply won't fall overboard.

E-mail: lawpress@magna.com.au

From *Sydney Morning Herald* editorial, 3 November 1997, p. 18 (excerpts).

The silence of the system

The [NSW] Ombudsman's annual report argues that openness in government departments and in councils has deteriorated over the past year. ... The NSW Ombudsman, Ms Irene Moss, notes that there has been a continual increase in complaints about public administration. ...

The Ombudsman has gone further than documenting complaints, however. She has provided an explanation why corruption and inefficiency remain so entrenched in government departments and in councils. The simple but significant point she makes is that the chief executive officers do not behave in a way that suggests a concern about the number of justified complaints their departments are generating. These agencies, Ms Moss argues, "need to change their culture and attitudes to whistleblowers". Instead of regarding people who stand up to corruption and inefficiencies as "rats under the house",

senior bureaucrats and politicians should use whistleblowers as a management tool. Ms Moss identifies, as well, a "disturbing trend" towards greater secrecy in public administration.

From *Australian*, 29 July 1997, p. 14

Whistleblower's role vital in fraud detection

THE survey of corporate fraud by KPMG (Business, 23/7) is the most recent in a series of disclosures chronicling corporate governance problems in Australia. KPMG found the annual aggregate cost of corporate fraud to be between \$15 billion and \$20 billion, with 480 companies reporting a two-year loss due to fraud of more than \$100 million. In 1996, Ernst & Young reported similar estimates, citing 95 per cent of companies as having suffered at least one fraud in the past five years.

In the Ernst & Young analysis, 66 per cent of companies found anonymous tip-offs useful in the discovery of fraud. In December 1996, this was supported by the president of the Institute of Chartered Accountants, who stated that "corporate fraud is most likely to be uncovered by other employees".

With increases in sophistication, the role of the whistleblower is paramount. Yet the national response to whistleblower protection has failed. In May 1993, draft federal whistleblowing legislation was introduced by The Greens' Christabel Chamarette. This was superseded by two Senate inquiries. The first committee, which reported in 1994, made 39 recommendations, including the establishment of a public interest disclosure agency to arrange investigation and to ensure protection for those making these disclosures. These recommendations were unanimously endorsed by a second multi-party committee that reported in October 1995.

None of the recommendations of the two Senate committees has been enabled, there is no federal legislation and I was advised in August last year that the Senate committees had no further role in the matter.

Contrast this with the United States, where whistleblowing cases are increasingly being prosecuted under the False Claims Act of 1861 and whistleblowers receive entitlements of between

15 and 25 per cent of monies recovered.

The failure to enact meaningful whistleblower legislation is a measure of our political bankruptcy. The costs may be realised too late.

Dr KIM SAWYER
Carlton, Vic

From *Giraffe News* (Report on the Giraffe Movement #37), 1997.

Fred Boeger of Davis, California, an unorthodox educator of bright potential dropouts, couldn't believe it when the state official responsible for research on kids' health had no information on the health problems Boeger's students were dealing with, despite his department's multi-million dollar budget. Boeger wanted to know what they were doing with the money. He started asking hard questions that led him deeper and deeper into one of the largest bureaucracies in the country. Boeger says he discovered more than 25 different issues involving corruption. Employees, he learned, were commonly threatened with pink slips [dismissal notices] if they dared speak out and Boeger, the "mysterious" questioner, got threats of unspecified mayhem. "People kept asking who was paying me," Boeger recounts. No one could believe he was just an outraged citizen who wanted a fair deal for kids. For almost four years Boeger kept going as his health and his bank account took a beating. Federal investigators came into the picture when Boeger's research implicated the State's superintendent of education. The Superintendent was convicted on four counts of felony conflict of interest and sent to jail. The Justice Department credits Boeger's superhuman persistence with stopping a scam that took money out of classrooms and put it in greedy pockets. The victorious but weary Boeger believes that the same type of corruption may be going on all over America and could be at the heart of many school systems' problems. Hoping that his book, *Education Corruption in California*, will help reformers clean up public schools in other parts of the country, he's dedicating the income from the book to a foundation to assist such reformers.

[*Giraffe News* is produced by the Giraffe Project, "a nonprofit organization that moves people to stick their necks out for the common good—and helps them to do it better." Fred Boeger is one of many to receive a Giraffe commenda-

tion. The Giraffe Project can be contacted at PO Box 759, Langley WA 98260, USA; fax 0015-1-360-221 7817; <http://www.giraffe.org/giraffe/>; office@giraffe.org.]

From *Sun-Herald* (Sydney), 21 September 1997, p. 23

Whistleblowers sacked as 'mad'

By Sue Williams

HUNDREDS of healthy public sector workers are being certified as mentally ill to force them out of their jobs, it has been claimed.

According to the alleged victims, diagnoses are made by doctors paid by units of State governments so the workers are forcibly retired, suspended or dismissed—despite their own doctors giving them clean bills of health.

One schoolteacher was told she was suffering from mental abnormalities and suspended, even though two independent psychiatrists found her to be "sane and logical with a very high intellect".

A fireman who was told he had a personality disorder and was retired, later won \$30,000 plus costs through the Compensation Court of NSW.

"People think this kind of ploy only happens in places like Russia but I know a number of cases in which this has happened here now," said consulting psychiatrist Dr Anne Schlebaum.

"I am very concerned about the number of people who are losing their jobs with employers using psychiatric misdiagnoses to get rid of them," she said.

Most of the public servants who have been assessed as having psychiatric problems had a history of criticising health and safety procedures at work, complaining about management or blowing the whistle on misinformation being supplied by their departments.

Many in NSW are sent off to a company called HealthQuest—a unit of the Central Sydney Area Health Service. There they are assessed by a psychologist or psychiatrist who has usually been fully briefed by their employer about problems in the workplace.

But HealthQuest deputy director Helen Jagger said the unit was impartial. Half of her work concerned

employees involved in "complex issues" with employers, but the company's role was simply to provide an independent assessment of whether people were fit to work and in what capacity, according to questions asked by employers.

"Then it's up to the employer what they do with that," Dr Jagger said. "For the majority of people in that situation, there's an appeals process...which gives that person an opportunity to provide whatever medical evidence they want."

Teacher Bob May, an active union representative and health and safety officer, was one who appealed against his HealthQuest assessment to the Medical Appeals Panel. This led him to another psychiatrist, who said he had a "paranoid personality disorder".

Mr May, 45, a teacher for 18 years, then paid for an independent evaluation by psychiatrist Otto Reichard who found him to be suffering from understandable stress as a result of the situation, but no evidence of any paranoia.

"I have seen a great number of people with similar kinds of problems where psychiatrists are used as an excuse for seeing that someone is stood down," Dr Reichard said. "I don't say there's absolutely no finding, because there's hardly anybody for whom you couldn't find *something*."

From *Science*, vol. 277, 12 September 1997, p. 1611.

Home for scientific whistleblowers

Whistleblowers who accuse their peers of scientific misconduct may soon get some full-time support—from a Michigan-based group calling itself Whistleblowers for Integrity in Science and Education (WISE). The outfit, an informal concept until now, may get a regular office and staff this year, thanks to funds promised by Carolyn Phinney, a psychologist formerly at the University of Michigan (UM), Ann Arbor.

This summer Phinney won \$1.67 million in a Michigan state court judgment against UM and two senior researchers in gerontology whom Phinney had accused of using her data without authorization. Phinney asked the university to intervene in 1988. Dissatisfied with the school's response, Phinney filed suit, deliberately avoiding the cumbersome federal system for punishing misconduct, she says. She

won a jury trial in 1993 and was upheld when UM appealed to a higher state court. In July, UM decided not to pursue the case further and wrote a check to Phinney.

Phinney says she and psychologist Robert Sprague of the University of Illinois, Urbana, conceived of WISE several years ago. Sprague was also involved in a long-running battle after accusing a colleague of scientific misconduct; both would like to help others avoid the experience. So Phinney plans to use some of the settlement money on WISE to offer counseling, form a network of informed lawyers, and provide access to a database on misconduct cases maintained by Sprague.

From *Weekend Australian*, 27-28 September 1997, p. 4

Irony of leak probe is in the timing

By Ian Henderson

The Australian Federal Police investigation into alleged leaks from the department of Administrative Services is at the centre of a notable irony in the travel rorts affair.

At the same time as DAS boss John Mellors called in the AFP to track down the source of the leak to journalist Laurie Oakes that revealed the flaws in Mr Sharp's travel allowance claims, the federal ombudsman was urging increased protection for whistleblowers.

The new Public Service Bill now before the federal Parliament would outlaw any victimisation or discrimination against whistleblowers in the Australian Public Service.

But this week ombudsman Philippa Smith told Parliament in her annual report that provision failed to go far enough, and her deputy John Wood told a parliamentary committee that the law should make whistleblowing easier.

Ms Smith said the measures proposed in the Bill were "an important development if we are to support those who are willing to identify possible misconduct or corruption, and afford them the appropriate protection against recrimination or harassment."

But the ombudsman said the protections should be extended to cover non-APS employees, including those working in government business enterprises and other statutory authorities.

"I believe it is crucial that a scheme

is introduced to cover these employees as well," Ms Smith said in her 1996-97 annual report.

Mr Wood told the committee on Wednesday that the Bill fell well short of "best practice" to protect justifiable disclosure of information by public servants.

He recommended a statutory defence to the offence of disclosing official secrets.

On Tuesday—with added detail on Wednesday—Oakes had reported Mr Sharp's secret repayment of a \$8740 travel allowance overpayment, a report that ultimately led to three forced ministerial resignations and the sacking of two senior staffers in the Prime Minister's office.

Mr Mellors called in the AFP on Thursday to investigate the possible leaking of DAS documents.

Yesterday, an AFP spokeswoman confirmed that Mr Mellors had "referred information to us in relation to the unauthorised disclosure of information."

From *Sunday Times* (Canberra), 28 September 1997, p. 8 (excerpt).

Blowing the whistle does not always make a noise

Mike Taylor

When does leaking equate to whistle-blowing? When someone within the Department of Administrative Services leaked information about politicians' travel claims which led to the resignations of the Minister for Transport and Regional Development, John Sharp and the Minister for Administrative Services, David Jull, could that be construed as whistle-blowing? Well, as the rules and regulations pertaining to whistle-blowing in the Australian Public Service currently stand the answer is absolutely not. In other words, the Secretary of DAS, John Mellors, is quite right to call in the Australian Federal Police to investigate what happened and perhaps take action against those who broke the rules.

But hang on a moment. Surely the person who leaked the information to the media was ensuring that a matter of the greatest importance came to public

attention. Surely, if that person had followed the rules, there was a considerable likelihood of the matter being hosed-down and somewhat less controversially handled? Of course. If the information which led to the resignations of Sharp and Jull had not been leaked then it would have been handled very differently. While Mr Sharp may still have had some explaining to do, it is entirely arguable that Mr Jull would still be in a job.

As Mr Mellors announced on Thursday that he had called in the AFP, the national secretary of the Community and Public Sector Union, Wendy Caird, expressed concern at such action and suggested it raised some interesting questions about the whole manner in which whistle-blowers are treated in the APS [Australian Public Service].

She said that, in particular, it raised questions about the effectiveness or otherwise of the whistle-blower provisions contained in the new Public Service Bill.

A close examination of those provisions suggests Ms Caird has a good point. Quite frankly, it seems highly unlikely that utilisation of the whistle-blower provisions would have generated the same results as last week's strategic leaks.

From a media point of view, therefore, Ms Caird's concerns have some obvious merit but from the point of view of someone running a Commonwealth department it is easy to see why Mr Mellors would prefer to have a whistle-blower go through the usual whistle-blowing channels rather than resorting to a rather well-placed media leak.

So let's examine what might have happened had the information about Mr Sharp's repayment of about \$9000 in parliamentary travel allowances not been leaked. Let's look at what would have happened if the person or persons had followed the usual whistle-blowing procedures.

That someone would have notified someone such as a defined person within their department or the Public Service Commissioner who, in turn, would have investigated the matter. What happened to the allegation or matter for concern from that point would depend on the attitude of the defined person and their findings.

One is inclined to suggest that a defined person within DAS might have thought to ensure that whatever the outcome of their investigations the

minister was not deliberately embarrassed.

If the AFP does manage to find who leaked the document in DAS then that person will face action under the Crimes Act. If that person had followed the procedures laid down for whistle-blowers then the Crimes Act would not have applied. Indeed, the new Public Service Bill and its associated regulations make this very clear.

The bottom line, of course, is that strategic leaking to the media on matters such as Parliamentary travelling allowances is likely to generate a vastly better and faster result than whistle-blowing. Indeed, last week's events raise some interesting questions about the entire system of whistle-blowing when the objective of the blown whistle is a Minister of the Crown. ...

Submitted to *Sydney Morning Herald* and *The Age* (Melbourne)

"Cutting costs and Walkley's"

"Cutting costs, independence and achievement"

The ABC is not only suffering cut-backs but is contemplating the high cost of being nominated for a good many Walkley Awards this year. It is understood that the ABC has some 18 *News and current affairs* finalists in both radio and TV divisions of this year's Walkley's. As the national winners will be awarded their gongs in Melbourne next week the bill for shipping the many finalists and executive extras has become something a might daunting for the *NewsCaff* accountants.

'Sound independent journalism' has it seems become a costly award winning problem in the ABC's *NewsCaff* division.

Quick to act, ABC executives backed by their Board, announced last week a plan guaranteed to halt these excessive journalistic achievements and their alarming drain on scarce ABC resources. Their proposal, disclosed recently in the *Herald* (14/11/97 Pelita Clarke), is to commence 'outsourcing' the production of ABC *NewsCaff* programs to commercial coproducers. This will skilfully kill two birds with the one stone.

With one clever blow and with their eye clearly on the emerging *Walkleygate* embarrassment, the ABC Board will not only cut program production costs but will, by effectively undermin-

ing ABC independence and editorial integrity, torpedo any chance of such Walkley successes happening in the future.

Mr Alston is so right "the \$55 mill cut to the ABC ... has had a positive effect." "It's made them (management) aware of new possibilities." Now if only the public and those protesting journalists would take heed.

John Millard—ABC TV

John Millard blew the whistle on the ABC's plans to 'outsource' programs.

Striking a Balance

Hate Speech, Freedom of Expression and Non-discrimination

Where should the line be drawn between a firm commitment to freedom of expression and the right to be free from insult and harassment on racial, religious or other grounds?

The impetus for *Striking a Balance* was a conference convened by ARTICLE 19 and the Human Rights Centre, University of Essex, in April 1991, when more than 30 experts from around the world examined the rise in racism and racist violence in Europe and other liberal democracies, and the measures taken to curb racist speech.

The 27 papers published here examine the laws which regulate hate speech in 14 countries, the ways in which they have been enforced and the potential conflict between the national and international standards which protect freedom of expression and those which prohibit discrimination. Also included are policy statements from a range of human rights and civil liberties groups.

Some contributors believe that laws punishing hate speech have an educative role which, over time, will reduce racism, and that such laws represent an important societal statement that racism and racist speech will not be tolerated. Others are vehemently opposed to any legal sanctions and provide examples to show that laws, once on the statute books, are all too often used as tools by the powerful to oppress the powerless.

Many make a clear distinction between hate speech and acts of discrimination, stressing that the latter should be prohibited by law, whereas the

former, although highly undesirable, should be regulated only under very special circumstances which, necessarily, vary from one cultural context to another. Thus, where the line should be drawn will also vary.

Most contributors agree that laws are not, and never can be, sufficient to eradicate racism, and emphasise that what is necessary above all else is a sustained commitment by governments to promote equality of opportunity, housing, employment and public affairs.

The balance must be struck between equality, dignity and freedom of expression. The purpose in publishing this collection, the first to bring together commentaries on such a wide range of national experience and international perspectives, is to advance the debate in this controversial area of free speech.

ARTICLE 19

Lancaster House, 33 Islington Street, London N1 9LH

ISBN 1 870798 76 7

Tel 0011-44-171 278 9292

Fax 0015-44-171 713 1356

Price £9.95 or \$18.00

From *The Republican*, 15-21 August 1997, pp. 17-18.

Speak out—and when you're sued just bite back

SLAPPs: Getting Sued for Speaking Out

by George W. Pring and Penelope Canan

Temple University Press, Philadelphia, 1996, 279pp, US\$24.95

reviewed by Brian Martin

Since the 1970s, thousands of US citizens have been sued for activities that most of us take for granted. They have written letters to government agencies about pollution, made complaints about their children's teachers, testified in opposition to a local real estate developments, reported the occurrence of sexual harassment, and circulated petitions, among other such actions. They have, afterwards, been sued by interested parties: the companies causing the pollution, their children's teachers, the real estate developers, etc. These legal actions for defamation, conspiracy, interference

with business and various other charges are intimidating. Many of the citizens have been scared into silence.

George W. Pring is a law professor and Penelope Canan a sociology professor at the University of Denver. In the early 1980s they realised that there was an epidemic of legal actions whose purpose was to intimidate citizens. These suits had little chance of success and indeed few of them succeeded in court. But they still worked for the filers, since even when they lost their cases, they scared their opponents and achieved their goals.

Pring and Canan investigated hundreds of these cases. They dubbed them Strategic Lawsuits Against Public Participation or SLAPPs, a brilliant acronym that soon became a common term. They found a common thread: the targets were exercising their free speech to petition the government, an activity protected by the first amendment to the US Constitution. The petition clause of the first amendment is much less well known than the more familiar parts protecting freedom of speech, the press and assembly.

In 1984 Pring and Canan initiated the Political Litigation Project at the University of Denver and began systematic investigation of SLAPPs. They have carried out a detailed study of 100 cases, interviewed numerous filers, targets and observers in some prominent cases, and tested their model of SLAPPs in hundreds of additional cases. They have advised targets, lawmakers and media, testified in cases and written many articles. They are the

authorities on SLAPPs. This book is a summary of their experience, oriented to a wide readership.

After introductory chapters, including one covering legal precedents and argumentation, there are chapters on the five major types of SLAPPs: suits by real estate developers, suits by public officials (including police, teachers and politicians), suits against environmentalists, suits against opponents of "locally unwanted land uses" (LULUs) and suits against those defending the rights of women, workers, consumers and others. These chapters are filled with examples and analysis.

The final three chapters tell how to respond to SLAPPs. One chapter gives detailed advice for those subject to a SLAPP. A key point is recognising that a suit is indeed a SLAPP and naming it as such. The greatest mistake is to defend on the facts in the framework defined by the filer. A SLAPP essentially takes a political or social issue in which the focus is on the behaviour of a company or individual and transforms it into a private legal issue in which the focus is on the behaviour of the person who spoke out. By labelling such a suit as a SLAPP, the political dimension is highlighted.

Another chapter gives advice on suing the SLAPPer. This is the so-called SLAPP-back, for which the most useful charge is malicious prosecution. SLAPP-backs have proved an effective means to penalise SLAPPers and deter potential ones. The final chapter tells about anti-SLAPP legislation, which has been enacted in a number of US

states.

The book is oriented very much to the US situation. Aside from a mention of SLAPPs in other countries, including Australia, they focus entirely on US examples, laws and responses. An especially significant aspect of this focus is Pring and Canan's orientation to the US constitutional right to petition the government, which they use in defining SLAPPs and rely on for defending against them. In Australia, without such a constitutional protection, it is more apparent that the law must be treated as an arena for social struggle. Pring and Canan could have broadened their analysis and advice for targets if they had focussed less on constitutional protections. After all, the very prevalence of SLAPPs in the US is testimony that laws alone—in this case the Constitution—are not enough to guarantee free speech. A struggle is required even with the most explicit laws. Pring and Canan mention in passing (p. 119) that media coverage can be a potent tool for targets—a point that warrants extended discussion.

For all its US focus and orientation to legal strategies, this book is a vital resource for anyone with concerns about free speech and the law. Get it for your library, your law firm and for any group of citizens planning to speak out. The frightening reality is the SLAPPs work in scaring most targets, who become less active than before. By becoming aware of the dynamics of SLAPPs, judges, lawyers and citizens can mount better defences against them.



The Republican, 15-21 August 1997, p. 17

Whistleblower Killed: Who Killed Bill Roy?

Bill Roy was Principal Technical Officer at Telecom Tower, Canberra. He was in charge of maintenance of Tidbinbilla Tracking Station and maintenance of ABC radio and television transmitters in Canberra. He played such a vital role in NASA communications during manned space flights that astronauts often dropped in to thank him. His daughter has a photo of her father with John Young and another American astronaut. However, there was a sinister aspect to Roy's work. Telecom Tower is not there to give Canberra residents better TV reception. It houses equipment used for espionage by ASIO and the CIA. Roy was in charge of this area of the Tower also. He interviewed and hired translators of Russian, German and other languages as well as monitoring the equipment. In August 1995, the ABC programme "7.30 Report" aired a segment on the Chinese Embassy spy scandal, in which an old interview with Roy at Telecom Tower was shown. Roy would have been instrumental in the setting up of equipment to spy on the Chinese.

Late in 1991 Roy's daughter became worried about him. He told her he did not approve of what was going on at Telecom Tower. He said he did not like Australia spying on embassies, which are protected by international covenants from that kind of intrusion. He said a lot of other things were wrong. He had thought of going into federal politics when he left Telecom. He did not like dishonesty and hinted that he knew things that "would shock Australia". Roy was admitted to Royal Canberra Hospital in November 1991 suffering from "nephrotic syndrome"—a medical problem described in forensic medicine texts as highly suspicious and often caused by toxic substances. Roy's daughter has the results of the biopsy which was done at the time, which clearly shows a foreign substance was present in the kidneys. For reasons that are not explained, no toxicological tests were done. Roy came out of hospital still a very sick man. His phone calls to his daughter became more frightening. One time he said "There is a parcel

being sent to you. Don't open it". He was ringing from a public phone box and was out of breath. The phone cut out. His daughter received a phone call from a woman with a German accent—she said "I will kill you, you bitch". She knows the identity of the woman—she had applied for a position of Russian translator at Telecom Tower, but had failed the English test. Her father had told her about it. One day in February, Roy called his daughter and said—"I'm not going to be alive much longer, my life is in danger". His daughter pleaded with him to go somewhere safe, but he hung up. She gave a letter to her sister-in-law to hand to her father in which she related all these things and pleaded with him to leave Canberra. The sister-in-law, who works with the Australian Federal Police, refused to hand the letter over for the coronial inquiry into Roy's death, but gave it back some time later.

Roy was found beside his new, undamaged bicycle on the bridge at Sullivan's Creek in the grounds of the Australian National University, with a broken neck on 20 March 1992. His daughter, being prepared for this, launched her own investigation within 24 hours. She spoke to the first policeman on the scene of the supposed "bicycle accident". He stated, "what accident? I thought he had a heart attack. It could not have been a bicycle accident. The bike wasn't damaged. I'm a triathlete and I know about bikes. I picked it up and looked at it. There was no damage". The daughter took photos of the scene and found a rubber skid mark a long way from the bridge where her father was found. It indicated heavy, sudden braking. Evidence at the coronial inquiry showed marks on the front tyre of the bike which confirmed this. So who had placed Roy and the bike on the bridge that night, next to a concrete bollard which had no marks consistent with a bicycle hitting it at high speed?

At the coronial inquiry, Roy's daughter tried to get her points across but was interrupted by the coroner who at one stage said "I've had enough of this" and walked out, slamming the door behind him. She demanded to

know why, if the coroner was claiming her father had run into a concrete bollard at high speed, the front wheel and spokes of the bicycle were intact. She wanted to know why the bike was undamaged. Police gave evidence of the frame of the bike being slightly bent, but this was not possible. They refused to produce the bike, and when Roy's daughter tried to obtain it, a member of the Australian Federal Police disposed of it and said it was "gone". The coroner made a finding of "accidental death" despite a statement by the man's daughter about the suspicious circumstances leading up to his death and her request that an open finding be made.

On a number of occasions Roy's daughter has been close to getting the media to expose the cover-up, only to be told that on "orders from Canberra" the story could not be aired. She has been told by one journalist there is a "D-notice" on publication of anything to do with her father's death. A "D-notice" is a federal censorship order which journalists dare not disobey.

When Roy's property was returned to his daughter, his older bicycle was given to her. It was apparent that Roy had been in an accident on this bicycle, as the spokes on the back wheel were smashed as though something had been thrown at the bicycle, like a rock. Other parts of the older bike had damage consistent with an accident. It is apparent a previous attempt had been made on Roy's life.

Federal Police have threatened Roy's daughter on several occasions. When she made inquiries before the coronial inquiry, she was told "If you don't stop asking questions, you will be up for contempt of court". She has had a phone call from a man with an Australian accent in which her life was threatened.

"My father believed in justice" she says—"I am the only one here to get justice for my father, and I know he would be relying on me. I will never stop asking questions and trying to find out the truth".

Roy's daughter has tried to get the toxicological report which was done at her insistence after her father's death

from the Canberra Coroners Office. Her request, which is perfectly reasonable and is always granted in other circumstances, has consistently been denied. She has phoned the Government Analytical Laboratory in Canberra and has spoken to a toxicologist who looked up the report and said—"I'd try and get it if I were you. It's very interesting, but I am not allowed to tell you what is on it". At the coronial inquiry, the coroner had produced a letter from the lab saying "no drugs or poisons were found", but as her father had been briefly revived and placed on life support, he had been given many

drugs—including morphine—which were listed on the hospital records.

Roy's daughter has unearthed a huge amount of information. She has interviewed a security officer at the Australian National University, who told her that inexplicably, just before the supposed "accident", someone had turned out all the lights along the bicycle path her father had been riding along after finishing a lecture at the university. The security officer had gone down to have a look, had found Roy and had called the police. Who turned the lights on the bicycle path out at precisely the time Roy met his fate?

There is a plaque on the bridge at Sullivan's Creek. It says, "William Francis Roy, Cpl. 549 Division RAF Darwin, Principal Technical Officer, Telecom Tower. 'He loved his fellow man' ". The last line is a quote from her father's favourite poem, "Abu Ben Adhem".

If you can help Bill Roy's daughter with any information regarding his area of work, or any information about what happened at the ANU on the night of his death, 20 March 1992, please phone or fax his daughter on (02) 4284 6091.

The Jan ter Horst case

How an honest hard-working migrant ended up being treated like a criminal and having his life ruined.

by Lionel Stirling, Victoria Branch, WBA

Mr. Jan ter Horst migrated to Australia from Holland in 1960. Little did he dream that one day he would end up serving the longest sentence in the history of Western Australia for contempt of court. He initially worked in Dandenong, Victoria for General Motors on the assembly line of the famous Frigidaire refrigerators. He left General Motors to work as a pastry cook in Adelaide and then went on to establish a successful business in Hampton Road, South Fremantle, Western Australia. In 1981, following an industrial accident, he sold the pastry business and re-established himself as an antique dealer. His house is at 20 Moran Street, Beaconsfield, within the Fremantle Council. The house was built on the brow of a hill with commanding views of the coast near Fremantle and the City of Perth.

In 1988, Mr. ter Horst decided to subdivide his 1014 square metre block. He would keep the upper part of 614 square metres where his home was built, and sell the lower portion of 400 square metres. It was naturally important to Mr. ter Horst to preserve his ocean view. He was advised that he should sell a strata title with a vertical restriction that would achieve this.

A surveyor was hired to subdivide the land. His survey ascertained that on the highest part of the vacant block, a home 4.5 metres high could be built at ground level and it would come 1 metre above the ground floor of Mr. ter

Horst's home. The surveyor had the following written into the proposed strata plan: "The stratum of Lot 2 extends between 10 metres below and 1 metre above the upper surface of the ground floor of the existing unit on Lot 1". The proposed strata plan was submitted to the State Planning Commission who sent it to Fremantle City Council for their approval.

At this time the Council had a frustrating policy on strata plans. Council would not approve such a plan till a building had been erected to "plate height", i.e. the walls were erected but no roof was yet put on. This left Mr. ter Horst in the ridiculous position where he could not provide a title to the vacant land he wished to sell till a building was partially erected. Whilst the building was being erected there was no registered strata plan which could legally control the height of the building. Of course, Mr. ter Horst did not realise just how disastrous this would prove to be. Mr. ter Horst's plan was lodged for registration after the building reached plate height, but this ultimately did no good.

Roy Weston Real Estate handled the complex sale arrangement. A buyer was found in Mr. Bruce Ilett. A contract was drawn up whereby the land was to be paid for in four instalments. The block was to remain in Mr. ter Horst's ownership till final payment was made on completion of the building. To protect Mr. ter Horst's view special

condition 4 of the offer and acceptance document stated: "The land offered for sale to the purchaser, named herein, of the said strata lot is subject to a building height restriction of 4.5 metres, which is measured from the existing level of the Eastern end of proposed strata Lot 2". As can be seen, this was not as precise as the wording in the strata plan proposal, though it should have been equivalent if the ground surface was left undisturbed. As a further protection to Mr. ter Horst's ocean view, Special Condition 5 stated: "The roof line must conform in essence to a flat roof style." Also, the strata plan proposal which had been lodged was referred to on the front page of the offer and acceptance and was supposed to be attached to this document, though it was later accepted by the courts that this had not been done.

Nevertheless there are three pieces of evidence to suggest that both the intending buyer, Mr. Ilett and his builder, Mr. Joe Conway, were well aware of the strata plan proposal to protect Mr. ter Horst's ocean view.

Firstly, Mr. Ilett admitted in court that the strata plan was referred to on the front page of the offer and acceptance document and that he had seen the strata plan prior to signing the contract.

Secondly, the plans of proposed Lot 1 and Lot 2 submitted to Fremantle Council by Conway Constructions for building approval are identical to that of the strata plan.

Thirdly, Mr. Ilett had "Clause 6" inserted in the offer and acceptance contract which reads: "This offer is subject to the purchaser obtaining from the vendor through the State Planning Commission, an extension of the Certificate of Title approval." This was inserted because Mr. ter Horst's strata plan proposal was two years old and due to expire and Mr. Ilett was obviously aware of this.

The commercial relationship between Mr. Ilett and Mr. Conway is important in assessing the level of communication between the two and the subsequent events which occurred. At a later time, Mr. Ilett wrote to Opposition Leader Jim McGinty describing the project as a "home" for himself and his wife, and he made similar claims in court. According to Mr. ter Horst, Mr. Ilett and his former wife were directors of Ashman Holdings Pty Ltd and Conway and his wife directors of Family Holdings Pty Ltd. In turn, the two shelf companies formed a third company, Icon Developments, to develop Mr. ter Horst's land.

Mr. Ilett was obviously unhappy with the 4.5 metre height restriction. During negotiations prior to the offer and acceptance contract being signed, Ilett crossed out 4.5m and wrote 5.5m. It was only on Mr. ter Horst's insistence that this was reduced back to 4.5m when the contract was signed. Mr. ter Horst notes that had he agreed to the 5.5 metre height, the new home would have a better ocean view and could be sold at a greater profit for Ilett and Conway.

A further consequence of the fact that Mr. ter Horst was still the owner of proposed Lot 2 was that he had to sign the building application on behalf of Icon Developments. The council, however, did not see fit to treat Mr. ter Horst as the builder when problems arose.

When the building was being erected, two disturbing facts emerged: (1) The building exceeded both the building height of 4.5 metres, and the strata height of 1 metre above Mr. ter Horst's ground floor; (2) Mr. ter Horst learned from a bricklayer that the bricklayer had two sets of plans, i.e. a different plan had been drawn up to that submitted by Mr. ter Horst. Also, Mr. ter Horst had been concerned about the amount of sand fill which had been dumped on the site prior to the building commencing.

Through his solicitor, Mr. ter Horst

requested that the Council issue a stop work order. Instead, the City Manager, Mr. Patrick de Villiers, requested the builder to submit revised drawings. These drawings were in Mr. ter Horst's name as he was officially the builder. Approval for the new plans was given to Mr. Conway and Mr. ter Horst was informed in retrospect. The builder did remove two courses of building blocks to reduce the building height to 4.5 metres, however, the building was still above the height limit of the strata plan proposal and it blocked Mr. ter Horst's ocean view by three courses of building blocks, or 34 centimetres.

The evidence seems to support the site having been filled by 0.47 metres. Mr. ter Horst estimates one truckload of rubble left the site and 18 to 20 truckloads of sand came in. Mr. Conway claims 20 truckloads of rubble were removed and 16 truckloads of sand fill came in. The subsequent ombudsman's report refers to the evidence in court of Mr. Benetti, a surveyor, as follows: "The evidence shows a variance between the designed finished floor levels of 10.9 metres and 12.1 metres and the actual finished floor levels of 11.54 metres and 12.57 metres. This evidence suggests that more than minor levelling took place." The ombudsman's report is important because it emphasises what was established in court, i.e. that there was landfill and that the fill raised the floor levels of Ilett's and Conway's home by 0.47 metres. This seems to be a clear breach of special condition 4 of the offer and acceptance contract which stated: "The land offered for sale to the purchaser, named herein, of the said strata lot is subject to a building height restriction of 4.5 metres, which is measured from the existing level of the Eastern end of proposed strata Lot 2".

In late 1989, Ilett and Conway initiated civil action against Mr. ter Horst for breach of contract in that ter Horst refused to supply them with a duplicate certificate of title to enable lot 2 to be titled to them. It appears they needed a bank loan and the bank would not lend money without a title. Judge Charters ordered Mr. ter Horst to produce the duplicate certificate of title to the Department of Land Administration within 10 days. He also ordered a new building licence to be issued. Mr. ter Horst appealed to the Supreme Court, but the Supreme Court upheld Judge Charters' ruling, focussing on the claim that the strata plan was not

physically attached to the offer and acceptance. The judgement stated: "It was common cause that the plan referred to was not attached to the contract and became available at a date after execution of the contract."

Mr ter Horst refused to hand over his title for two reasons: (1) the home had not been completed, and (2) the house at that stage of completion was outside the parcel limit of his strata plan (i.e it was too high). The Crown Solicitor's office took action against Mr. ter Horst under Section 76 of the Transfer of Land Act. It is worth noting that Ms. Janet Weedon of the Crown Solicitors Office considered that Ilett was not entitled to receive the title to the land because the building was not completed.

When Mr. ter Horst would not conform, Judge Kennedy jailed Mr. ter Horst under section 77 of the transfer of land act. When Mr. ter Horst still would not hand over his title, Judge Charters cancelled Mr. ter Horst's strata plan, No. 19083. A new strata plan No. 25587 was registered and two new titles issued for Lot 1 (Mr. ter Horst's existing house) and Lot 2 (The house built by Ilett and Conway). The new titles however were held by the court, so Mr. Ilett was not able to use the Lot 2 title at that stage. Mr. ter Horst spent 91 days in jail, a Western Australian record for contempt of court. He was first sent to Casuarina Prison, the state's worst, housing murderers and rapists. Later he was transferred to Wooroloo, Canning Vale and Karnet prisons. Whilst in jail, Mr. ter Horst went on a hunger strike, losing 16kg and becoming confined to a wheelchair.

The action of the court in cancelling a properly lodged strata plan is most interesting. Mr. Ross Annear, The Consumer and Justice Advocate, is a firm and dedicated supporter of Mr. ter Horst. On 29 September 1996 he wrote to the Commissioner of Titles and stated: "I contend that the Strata Plan has precedence over the offer and acceptance document and should have been upheld by the court as the primary document in this case and the offer and acceptance ranked second". Mr Annear's contention seems to be basic common sense which no title registration scheme could avoid. Registered titles are vital for dispute resolution, so they must have the highest status.

In Mr. ter Horst's case, one family's ocean view was at stake. The following analogy may help to highlight the

principles involved. An estate agent sells a block of land adjacent to a right of way which is used to provide existing residents with a pedestrian shortcut and also for purposes such as drainage. The agent mistakenly adds the dimensions of the right of way to the land dimensions on the contract. The buyer then erects a fence around the block and right of way. The residents complain to the council who take legal action to recover the use of the right of way for the residents and other purposes. No one would expect a judge to decide that a new title should be issued, and the residents deprived of a facility that was offered to them when they bought their blocks of land. In such a case it would be expected that the properly registered plans and the corresponding titles should be treated as the highest ranked documents. Even if the judge feels the land buyer has acted in good faith, it seems more appropriate to let the courts decide whether the council is at fault in issuing the fencing permit or the estate agent is at fault in wrongly describing the land.

In December 1995, Mr. Ilett initiated legal action to use the title of Lot 2 to secure a bank loan. Judge Hammond allowed access to the title

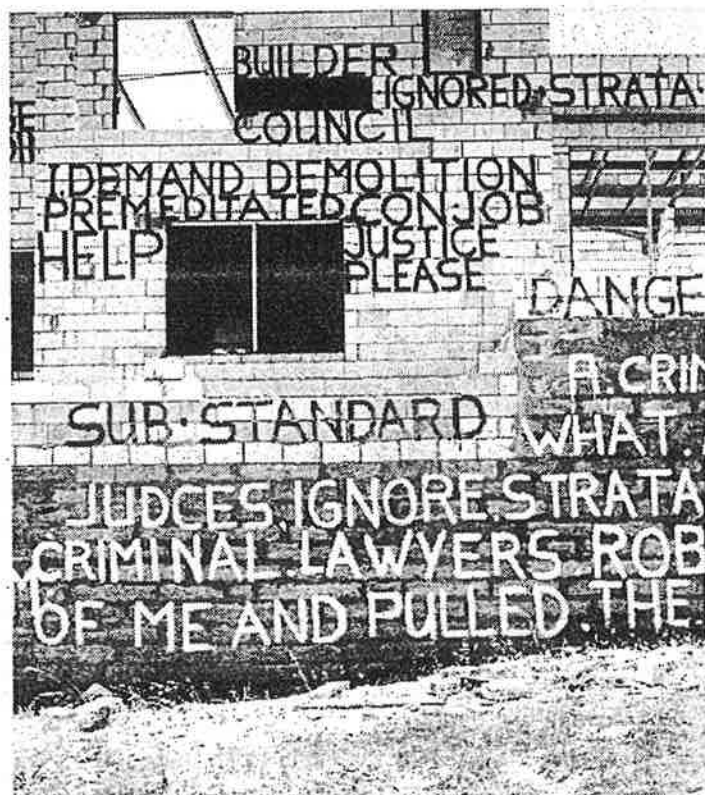
and Westpac registered a mortgage of \$124,000 on it. Judge Hammond thus allowed Mr. Ilett to use Mr. ter Horst's title to finance the completion of the house, despite the fact that the offer and acceptance stated he would not get the title till the building was completed. The offer and acceptance certainly didn't allow Mr. Ilett to use the title to obtain finance while constructing the building.

When describing the outcomes delivered to Mr. Ilett by the Western Australian Judiciary, Mr. ter Horst notes that he himself has become a citizen of Australia, but Mr Ilett has never bothered to do this and is still a British citizen. Mr ter Horst's detractors describe him as stubborn, obsessed and eccentric. His supporters admire the courage and strength of purpose that allows him to go on fighting a system that has crushed and defeated most others. Mr ter Horst's protests have cost him almost everything. He has lost his business and his savings due to legal expenses of \$150,000. His wife could not stand the strain and has left, taking all the furnishings and antiques. Mr ter Horst is left in a bare house surrounded by piles of legal documents and other correspondence. He does not eat properly and his health is deteriorat

ing. The police confiscated his valuable collection of antique firearms, none of which had any ammunition and hence none could be fired. He was however left with daggers and swords which could still be put to practical use.

Mr ter Horst has been subject to about sixty court appearances and time in four jails over issues such as the protest signs he has erected at his house. At one stage he was fined \$1500 for not removing his protest signs. This in itself raises important questions about free speech. Whilst an excess of signs might devalue a neighbour's property, we obviously need constitutional rights which allow us some form of expression when we feel we have important matters of public interest to communicate. Not everyone has the health and resources to spend all day marching up and down outside Parliament House carrying a placard. In my view everyone should be allowed a genuine protest sign the size of a large estate agent's signboard.

Mr. ter Horst believes Mr. Ilett has committed crimes against him. For example, Mr. Ilett used Mr. ter Horst's electricity without permission whilst Mr. ter Horst was starving himself in jail. Mr. ter Horst's posters used strong words including "criminal". Whilst they did not name Mr. Ilett, the dispute between the two is well known. Mr. Ilett took action under the defamation laws and Judge Templeman ordered the removal of window posters and for Mr. ter Horst's signs to be compulsorily painted over at Mr. ter Horst's expense (another \$2000). Mr. ter Horst claims Mr. Ilett has regularly made false statements to police alleging that Mr. ter Horst has breached a restraining order and damaged Mr. Ilett's building. When one such complaint went to court Mr ter Horst had to pay \$468, despite the fact that it was his word against Mr. Ilett's. Another charge was thrown out when the only evidence the police produced was that they had received a phone call from Mr. Ilett. Mr. ter Horst claims that on 27 May 1996, the police came to his home, told him he had breached a restraining order, handcuffed him, assaulted him, searched his home without a warrant and forcibly removed him from his home without allowing him to lock up or turn on his security alarm. The police charged Mr. ter Horst with assaulting police, but the crown prosecutor withdrew the case. The police then replaced that charge with resisting arrest. Mr. ter Horst has



● Neighbours have become used to anti-authority slogans on the walls of Mr ter Horst's incomplete house.

Freemantle Gazette, 25 January 1994, p. 4

charged the officers involved and will therefore be subject to further appearances in the district court.

Mr. ter Horst has asked the police for information about how he was supposed to have breached a restraining order. He was promised a written reply, but by 12 February 1997 Mr. ter Horst had heard nothing. It was on this date that Mr. Ross Annear wrote to the police inspector about these matters. In his usual positive manner he stated "Make no mistake Mr. Ilett is making fools of you and your men."

Mr. ter Horst claims that on 28 December 1996 at 5.30am he heard noises and saw Mr. Ilett leaving his property after smashing his windows and causing \$5000 damage. Mr. ter Horst claims Mr. Ilett at first told the police he did not do this but eventually confessed. Mr. ter Horst claims Mr. Ilett was fined \$400 plus costs but no

conviction was recorded.

The ter Horst case seems to be very genuine. He is supported by Mr. Ross Lightfoot, MP, after Mr. Lightfoot took legal advice. A recent legal aid application was supported by Ms. Barbara Scott, MLC. He is supported by Mr. Ross Annear, The Consumer and Justice Advocate. He is supported by the WA Council for Civil Liberties. A number of other obviously intelligent people have dedicated many hours to producing documentation on aspects of Mr. ter Horst's case.

I would like to suggest that those who are able should contact Mr. ter Horst and let him know of your awareness, interest and support. The time might come when a show of interest from interstate will sway the WA Government to do something about a situation they have up till now virtually ignored. The above is a

summary of a large amount of material forwarded to the Victorian Branch of Whistleblowers Australia by Mr. ter Horst. This article has been approved for publication by Mr. ter Horst and the Executive of the Victorian Branch. Copies of relevant documents can be forwarded to anyone who wishes to consider this matter more deeply.

Contact address: Mr. Jan ter Horst, 20 Moran St., Beaconsfield WA 6162; phone (08) 9335 6613.

Acknowledgments: In a number of places phrases and sentences have been taken verbatim from a long and excellent report, written in October 1996, whose author declines to be named at this stage. I also thank Peter McCartney, whose idea it was to publish this summary and who provided help and advice during its production.

NSW news and arrangements

Rachael Westwood

Caring and sharing nights, which take place every Tuesday evening at 7.30 at the Campbell St Presbyterian Church Hall in Balmain, are prospering. New whistleblowers turn up nearly every week to share their stories and gain the immeasurable comfort of realising that they are not alone and that what is happening to them has happened to many others, now and in the past.

Old hands give us updates on the their own cases, and sometimes even report a win as in the case of our own President Cynthia Kardell. Cynthia scored a spectacular win in the Industrial Relations Court, with the Registrar finding overwhelmingly in her favour. NSW members have been entertaining one another with quotes from Registrar Patch's judgment ever since. Here is our hands down favourite for you to relish:

Speaking of an accusation of subordination, he said, "It reveals a management attitude at the senior levels of the South Eastern Sydney Area Health Service which required an unrealistic and even oppressive degree of lickpittle subservience."

The news of Cynthia's win started an impromptu party at the next Tuesday's caring and sharing, with people bringing flowers, cards and a

feeling of optimism to the meeting.

Cynthia's happiness has been tempered by the certainty of an appeal, for which we understand the South Eastern Sydney Area Health Service has put aside \$100,000. Apparently they've got nothing better to spend their money on. It's a sad fact that for a whistleblower a win does not mean an end.

Stewart Dean has been relentless in advertising the flavour of Registrar Patch's judgement. In addition to this community service, Stewart also put up new shelves in the office under the Church. That has eased the space and filing problems in the office considerably. Our thanks to Stewart for donating his time and his handyman skills.

The last caring and sharing meeting for 1997 will take place on Tuesday 16 December. We resume in 1998 on Tuesday 13 January. The first branch meeting of the new year will take place on Sunday 1 February, 1998. All of us at the NSW branch wish you a happy and safe holiday season and we look forward to a 1998 in which the spirit of justice and democracy prevails—at least more than it has in previous years. Merry Christmas to you, one and all.

Whistleblowers on the net

At 3pm on Sunday August 3 1997, in the Church Hall, a group of

Whistleblowers stood for the National Anthem. The Whistleblowers Web site was officially open.

Thanks to the efforts and enthusiasm of Frank Nijad, Whistleblowers Australia now has its own Web site on the Internet. The honour of being the first case recorded on our Web site goes to Neville Pangas. The home page was designed and created by Frank Nijad, with the help of two of his friends.

At the launch, Danny Lee from Electronic Frontiers Australia gave a speech about net censorship, freedom of speech and the possibility of defamation action arising out of internet publication. Unfortunately, Danny's advice was—see a defamation lawyer. The net is too young to have fully thrashed out these issues. The most refreshing thing about the net is the freedom of speech that currently exists—a pleasant change from the shackling of speech that many of us have encountered. It will be interesting to see how the flow of information on the Net changes in the future. Here's hoping it remains unchained.

The Whistleblower site will contain cases, copies of the Whistle, and a guest book which you may like to sign if you visit the site. Should you wish to put your case on the net, you will be able to scan any documents that you

want to include. If you do want to be included in the cases section of the Web site, contact the Web site managers—Frank Nijad, Grahame Wilson and me, Rachael Westwood. Send us a page or page and a half on disk and hard copy for consideration for inclusion.

If you want to be included but don't understand the first thing about the Net, please don't let techno fear stand in your way. We've got plenty of experts willing to give you a helping hand. The more cases we can get on the site, the better.

Mordechai Vanunu

On 1 June 1997, the NSW branch was honoured to host Sam Day, journalist, activist and whistleblower, to give us a talk on the arch whistleblower, Mordechai Vanunu.

71 year old Sam Day's activist career has been long and venerable. He blew the whistle on South Africa's nuclear program. He fought the USA government when they tried to stop the publishing of the recipe for a hydrogen bomb. Sam discovered that the information was all freely available, and that anyone with enough money can make a hydrogen bomb, making the US government's insistence that the hydrogen bomb project be a kept a state secret a joke. Sam Day is also the head of the US campaign to free Mordechai Vanunu, currently serving his 11th year in solitary confinement in an Israeli prison.

Mordechai Vanunu is 42 years old. Born in Morocco and one of 11 children, he migrated with his family to Israel, where his father made a living selling religious artefacts at the temple. They were a stern and orthodox family. When it came time for Mordechai to go to college, he got a job at the Demona factory. The Demona factory was odd because no-one knew what went on inside. Ostensibly, Demona was a shoe factory.

When Vanunu signed up with Demona, he signed an oath of silence swearing not to tell a soul what he did in the factory. Vanunu started in the plutonium separation division. There, spent fuel rods were separated to get to the plutonium. The plutonium was then worked into the core of the nuclear warhead.

Mordechai worked at Demona uneventfully while completing his studies. In the late 1970's he met young Palestinians who were fighting for freedom. His political awareness

grew and he began to write articles and ran for the President of the Student Union.

In June 1982 Israel invaded Lebanon and the Peace Now movement was born. It was then that Mordechai Vanunu took secret photographs of the operations at Demona. He didn't do anything with them, and had no real idea of what he would do, if anything.

In 1985, and after 9 years working there, the Demona plant laid off Vanunu and with his severance pay he travelled abroad.

In 1986, he arrived in Sydney and joined the community of St John's church as a volunteer. There he took part in discussion groups and in April/May of 1986 he gave a talk and slide show on the Israeli Government's nuclear program. His talk came to the attention of the media and as a result, the London *Sunday Times* interviewed him along with Dr Frank Barnaby, and other scientists working in the field of nuclear design. They concluded that:

He was for real.

His story demonstrated beyond doubt that Israel had developed nuclear weapons.

Israel had become a major force with 100-200 atomic warheads.

Thermonuclear weapons were being developed in Israel.

In August 1986, the Australian Secret Service tipped off the Israeli Secret Service, and Mossad swung into action.

They informed Shimon Peres, the father of the nuclear weapons program. Peres ordered him brought back alive. By this time, Mordechai was in hiding in the UK, while the *Sunday Times* decided what to do with his story. Peres did not want relations with the UK disturbed. Mossad must capture him elsewhere.

Mordechai Vanunu is the sensitive type. When he met the charming Cheryl Bentoff in Leicester Square he fell in love and soon told her all about his problems. She was terribly concerned and told him that he needed to get away from it all. She had a sister in Rome. Would Mordechai like to take a holiday with her?

Mordechai would. Unfortunately, Cheryl was a Mossad agent. In Rome Vanunu was knocked unconscious, drugged and kidnapped. On October 5 1986, the *Sunday Times* published his story, too late for Vanunu, who was accused of espionage and convicted in a secret trial to 18 years in prison.

Mordechai Vanunu has spent 11 years in solitary confinement—a punishment that is cruel, inhuman and degrading. His mental health is suffering. The policy of his captors is to keep him until he's so far gone that he'll lose his credibility. He's also serving as an object lesson to anybody who's thinking of protesting the nuclear weapons program in Israel.

So what can we do to help him? Write letters.

Join the letter campaign lobbying the Israeli government to release Mordechai Vanunu. Letters should be written at the beginning of each month. You can fax your letter to the Israeli Ambassador to Australia, Mr Shruel Moyal. Fax: 02-6273 4273

Write to Alexander Downer asking for him to publicly support Mordechai Vanunu. Downer's fax is: 02-62777500.

And finally, write to Mordechai himself. The Israeli government is prepared to release him if he swears never to talk about his case. So far, he is refusing to go. Sam Day's campaigners are trying to convince him that his work is done, but years of solitary confinement have made him distrust even them. Write to Mordechai and give him your support. A letter sent to Mordechai Vanunu, Ashkelon Prison, Israel, will reach him.

Anyone who wants to become more involved in the campaign should contact Tom Henderson-Brooks on (02) 9360 6844, or 014 602 105.

Marlene Goldsmith and child pornography

At the September meeting of the NSW branch, Dr Marlene Goldsmith, NSW MLA (Lib), spoke on the subject of child pornography. She was there to inform us and to flog her new book, *Political Incorrectness*. If the standard of her speech was anything to go by, the book should be a good read.

Dr Goldsmith entered politics nine years ago. She quickly found that there are certain things "you just don't talk about". Pornography was one of them. She further found that the media does not run articles on the harmfulness of pornography because it has no interest in running articles that address the harmfulness of some information.

Dr Goldsmith contends that if people's real concerns are not addressed then society will suffer an explosion, such as the Pauline Hanson phenomenon.

In her research into child pornography, and as a member of the Social Issues Committee, she travelled to Amsterdam to interview Dutch police. The Dutch police were made desperate by the Dutch laws which were so loose that the offenders were never caught, let alone brought to justice. So the Dutch police compiled a pornographic video from the evidence they had collected and showed it to politicians. Dr Goldsmith saw it and was horrified. It remains to be seen whether it had a similar effect on Dutch politicians. (At this point Dr Goldsmith warned her listeners she was about to describe the film. Your correspondent left the room on shaky legs. Sorry folks, you'll have to contact Dr Goldsmith for the details)

Dr Goldsmith made the following points about child abuse:

Of the 15 juveniles on death row in the USA, 12 had documented histories

of being abused as children. In 8 of the cases, their parents had tried to kill them.

In every example of child pornography, a child is being sexually abused. To the year 1992, one million children had been abused in the making of pornography.

For every sex offender there are many, sometimes hundreds, of victims.

So what are we doing about it? The NSW State government favours the UK model which does not protect children. The police keep a register but communities do not have access to it. In the USA model, a register of offenders is kept and communities have access to it. Of course, this is a terrible curse for ex-offenders, but as Dr Goldsmith said, whose rights are more important?

The argument that child pornography is a safety valve is a tired old saw. The point is that child pornography is

itself an act of abuse and child abusers validation, thus leading to more abuse.

Dr Goldsmith argues against lowering the age of consent for boys because boys mature approximately two years later than girls and because sexual identity is linked to physical maturing. In fact, she argues for raising the age of consent for boys and girls in pornographic movies to 18 years.

As she pointed out, the way the law stands in NSW, 16 year old children can't buy cigarettes or alcohol, but they can take part in a heterosexual porn movie. It's nice to know our government cares so much about our children's health. For more information, contact Dr Goldsmith, or indeed, buy her book. You might also like to get involved in the Australian Child Protection Alliance, formed by Dr Jean Lennane and others to fight child abuse.

WBA dialogue and debate

Whistleblowers Australia: strengths, weaknesses and future directions

Brian Martin

In just a few years, Whistleblowers Australia has achieved quite a lot. Members have provided information and personal support to hundreds of whistleblowers. Campaigning and publicity have helped raise the profile of whistleblowing in the media and the community. Where should WBA be going now? The following is a personal rather than an official view.

Strengths

The foundation of WBA activities is the commitment, principle and talent of its members. A primary characteristic of whistleblowers is principled belief and behaviour. That there is a high level of commitment and talent is also quite clear.

In my view, the area of WBA's greatest effectiveness has been personal support. This includes individual support through phone calls and meetings as well as group support in meetings of the "caring and sharing" type. When previously isolated whistleblowers come in contact with others who understand what they have

been through, it can be an incredibly empowering experience. Celebrations and awards add an extra dimension to the process of providing support.

Another area of great effectiveness is networking, which often means putting people in touch with others with similar interests or experiences. This happens all the time as part of meetings and contact with individuals. Networking has contributed to groups and campaigns in particular areas, such as paedophilia. No single person or office could provide the sort of networking that WBA, as a national organisation, is able to offer.

WBA is also effective in producing and distributing information. This includes, first and foremost, *The Whistle*, but also information kits, leaflets, articles, letters and web sites. Information materials are a vital part of the support and networking functions. Conferences provide a potent means of combining support, networking and provision of information.

Finally, WBA has had some success in campaigns, for example in challenging WorkCover problems, developing

policies for unions and pushing to change the International Labour Organisation convention to include protection for public interest disclosures. The process of campaigning is a vital part of these campaigns, leading to links with individuals and groups, media coverage and greater public awareness, even when formal policies remain unchanged.

Measured in terms of its membership, activity and visibility, WBA seems to be as strong as any whistleblower organisation in any country. Why is this? One explanation is that Australia is a convenient size, large enough to have plenty of whistleblowers but not so large as to be unwieldy for one organisation. Another explanation is that Australia is not so repressive as to squash all dissent, but not so tolerant as to coopt most of it. Yet another explanation is that it was particular personalities and unique circumstances that enabled WBA to survive and thrive as well as it has. Research into whistleblowing and whistleblower organisations in different countries is needed to determine

whether these or other explanations stand up to scrutiny.

Weaknesses

While it is important to focus on and celebrate strengths and successes, it is also useful to acknowledge and understand weaknesses. A strong organisation can be strengthened by being open about problems rather than hiding them in the false hope that others won't notice. Understanding weaknesses is vital when undertaking planning for the future and adapting to changes in external circumstances.

Undoubtedly the greatest weakness of WBA is internal conflict, especially when it involves attacks on members. This undermines the support function, often driving people away, and takes time and energy away from productive activities. Internal dissension may arise from clashes between individuals and from a struggle for control, status or recognition.

In contrast to personal attacks, policy disagreements are not necessarily a weakness. If handled with tolerance, they can often be a source of creativity and insight.

Another weakness of WBA stems from the characteristics of whistleblowers. Their common feature is challenging some abuse of power, but other than this they have diverse attitudes and behavioural styles. There is an enormous diversity of viewpoints on social issues, preferred methods of action, skills and beliefs. Members of cohesive, effective organisations usually have similar orientations. WBA, by its nature, cannot hope to have the same level of cohesiveness as might be found in many other voluntary organisations such as church groups, sporting clubs or environmental groups.

Many whistleblowers come under severe attack, and few escape unscathed. This means that many members of WBA are so traumatised that it is a major achievement to hold their own lives together. The stress that many whistleblowers experience as a result of attacks is another weakness for WBA, since it means that only some members have a lot of surplus energy to help others and mount campaigns.

Limits to success

Although WBA has grown rapidly and had considerable success, this won't necessarily continue. There are several natural processes that are likely to limit

WBA's growth and success.

First, internal conflict may make it impossible to continue to grow, at least in the pattern of growth so far. When attacks on other members become more significant than attacks on corruption in the wider society, it is a sign of a dysfunctional organisation.

Second, WBA is a potential target for infiltration and disruption by hostile forces. Any group that threatens powerful interests is a potential target. WBA may not yet be influential or cohesive enough to warrant infiltration and disruption by any particular group, but a much larger and stronger WBA could easily become a target for attack. (Note that saboteurs who attempt to undermine an organisation by spreading rumours or discredit it by taking unsavoury actions are usually indistinguishable from sincere members whose actions lead to damage. Often it can be worse to worry and make allegations about sabotage than it is to treat everyone as sincere.)

Third, social movements are subject to natural cycles of boom and bust. The movement against nuclear weapons, for example, was strong in the late 1950s and early 1960s, faded out for nearly two decades, boomed in the 1980s but then again faded to virtually nothing. In each period of heightened social concern, most activists thought that the movement would keep going as long as the problem persisted. Actually, though, the movement fizzled out due to loss of energy by leading activists, loss of interest by the media, and symbolic successes (such as the atmospheric test ban treaty) that gave the appearance of victory while actually leaving the problem pretty much unchanged. WBA could go through a similar cycle, for example if key members left, media attention waned and some symbolic successes occurred, such as whistleblower legislation.

Finally, WBA can never be fully successful as long as there are systems of power that foster corruption. Whistleblowing is inherently subversive, since it is based on the notion that a subordinate, by exposing the truth, should be able to make those with more power accountable. Since corruption, exploitation and unjust practices are found throughout society and extend to its highest levels, some types of whistleblowing will always come under attack. While it is possible for a few whistleblowers to be vindicated, there are limits to more

general success. At some stage of WBA's evolution, progress will depend on major social reforms that will make most whistleblowing unnecessary.

Five roads to oblivion

1. WBA self-destructs through internal blow-ups.
2. WBA loses steam due to burnout and collapse of wider social support.
3. WBA gains large-scale financial backing and is transformed into a professional advocacy service, losing most of its volunteer support.
4. WBA's demands are coopted by official agencies and turned into mainstream policies, making WBA appear superfluous.
5. WBA's concerns are taken on board by many other organisations, so WBA's task is no longer necessary.

Strategies

What to do? There are many paths depending on one's assessment of strengths, weaknesses, goals, allies and opportunities. Here are some possibilities. These are not mutually exclusive.

A. Put the primary focus on prevention and cultural change. WBA by its current name and orientation puts most attention on individual whistleblowers. Much more attention is given to helping whistleblowers fight cases after they have been attacked than in promoting policies to prevent the abuses of power that make whistleblowing necessary in the first place. WBA might devote more attention to campaigns and even change its name, or set up a parallel organisation to address general issues. Whether it could do this and retain the current degree of participation is difficult to assess. An alternative is for WBA to transform itself into an umbrella organisation to link local whistleblower support groups and anticorruption activist groups.

B. Create an internal structure that allows initiative by many members and involves more people who support public interest campaigns. Currently a large proportion of WBA members are whistleblowers, many of whose energies are taken up by their own cases. Could more "supporters", those who are sympathetic to whistleblowing and social reform but who are not whistleblowers themselves, be brought into WBA? What would be the best way to do this?

C. Revamp organisational procedures to enhance trust between

members. A fledgling organisation needs to iron out procedural and constitutional problems that only become apparent as it develops. Responsibilities of office bearers could be clarified so that members know what they can and can't expect. Likewise, the relationships between individual whistleblowers and their individual supporters—relationships that currently are usually ad hoc—could be made explicit and formalised. Training in group process skills could help to make meetings and other interactions more productive.

D. Move towards an empowerment model in which the primary function of WBA is to give members skills and

experience to pursue their own cases and establish or join groups pressing for reform of systems creating social problems. This is one thrust within WBA already. Even so, there is a constant pressure to put expectations on a few office bearers, which is likely to replicate problems of official bodies. Rather than focus attention on WBA's formal procedures and official statements, the empowerment model is oriented to education and training of members and sympathisers.

E. Build links with relevant organisations and individuals, including journalists, lawyers, free speech advocates, trade unions and various action groups. WBA cannot bring

about an end to corruption on its own. At most it is a part of wider struggle to transform organisations and social policy. WBA already has links with many sympathetic individuals and groups. One way forward is extend and develop this process of linkage.

A strategy is not something that can be implemented by a few individuals. It needs to grow out of the active interests and commitments of many people. A first step is for more WBA members to think about the sort of society they would like to help create and talk with others about ways to move forward.

WBA members disenfranchised by unconstitutional national committee resolution to abolish branches

Keith Potter

During a telephone meeting on 15 September 1997, the national committee resolved by majority, "That the national committee in future not delegate any powers to any individual to act as a representative of WBA until such time as they have a proven track record."

The stated basis reads as follows: "Given the recent problems we've experienced in the Victoria and NSW branches, the ad hoc way in which delegation has been assumed by individual members can no longer occur. Delegation to any body in future must be properly considered and authorised by the national committee. Until such time that a WBA support group can be independently established and when such a group has proved that it can be an effective support group for whistleblowers, WBA national committee will not recognise any group as a branch of WBA."

The resolution abolishes members' rights to elect state branch chairmen, and other state officers. This important power is henceforth reserved unto the national committee, which may if it so wishes retain *all* power unto itself.

Also on 15 September 1997 the national committee resolved, by majority, to "invoke Section 23.6 of the WBA constitution to wholly revoke all delegations which have been assumed by Peter McCartney Victorian member of WBA."

Mr McCartney has not *assumed* any

delegations. He was formally elected Chairman of the Victoria Branch on 2 March 1997, after serving several months as Acting Chairman. He has performed nothing more than the normal powers of Victoria branch chairman and member of the national committee.

WBA membership numbers increased from 19 to 35 under his leadership. No *valid* evidence of any public detriment to WBA is tabled.

Section 23 of WBA's constitution does not empower the national committee to remove any office holder from office. Section 21 provides that only the *association in a general meeting* may do so. Protests to the national committee that the resolution is unconstitutional are baldly rejected.

Immediately this motion was passed Mr McCartney asked the national committee what would happen if the Victoria members re-elected him. *The National President replied that the members would have no say in the matter!*

A year or so back certain national office bearers commenced to interfere in Victoria branch matters. For example, without consulting the Victoria committee, the national committee granted membership to Victoria applicants, including publicly perceived fascists, and to a prominent person whose actions in office against a prominent Victoria whistleblower were reprehensible. Despite objections, and

obvious impracticality, the national committee refused Victoria opportunity for vetting membership applications and reserved such power entirely unto itself.

Mr McCartney objected to this and other interferences. He did so in accordance with the wishes of the Victoria branch committee. His insistence on correct protocols led to a lengthy exchange of letters and communications.

He reports that during a telephone hook-up a few days prior to notification of the motions resolved on 15 September 1997, both sponsors of the motions terminated their participation abruptly after expressing their exasperation with him.

The genesis of the problem in Victoria was false public accusation by a high profile whistleblower that Mr McCartney and myself, and a former Victoria branch chairman, had "sold out to the police". Mr McCartney called for apology. This was refused. I proposed formal mediation. This was refused. I then requested the National President to press for formal mediation. This was ignored.

Meanwhile, the high profile whistleblower and a very small number of supporters formed their own faction and held separate meetings. Their public false defamations of current and former WBA Victoria chairmen continued. Mr McCartney continued to press for apology. The national

committee refused to intervene, saying it was up to the branches to resolve such disputes.

Mr McCartney is also president of an organisation known as "Law Watch". Joint meetings of Law Watch and the Victoria branch of WBA are held for the convenience of members, the vast majority of attendees being members of both organisations. Non-members of WBA are never allowed to vote on WBA matters. The national committee is manifestly determined to break this link. It threatened to withhold Victoria's share of membership fees until the national committee is satisfied that the link is broken. In my view this is nothing more than a ploy. The national committee has not tabled any valid evidence of public detriment to WBA arising from the link. Following discussion on 15 September 1997 the national committee decided to refund Victoria forthwith. As of 25 September it is not received.

By letter of 17 December 1996 to the national committee I expressed the view that the content of recent letters to Mr McCartney was at best indicative of resolve by the national office holders to replace the elected Victoria executive with a faction of their own choice. No member of the dissident faction stood for election to any positions on the Victoria executive. The resolutions of 15 September 1997 further reinforce my view!

My repeated requests to the national committee that the dispute be referred for mediation in accordance with section 12 of WBA's constitution continue to be ignored.

By letter dated 18 September 1997 the National President declined my request to include relevant motions in the AGM set down for 28 September 1997. This contradicted the spirit of his invitation at page 18 of the August 1997 *Whistle*. The agenda for the AGM was set down without Victoria receiving reasonable opportunity to contribute to its formation. Section 27(1) of WBA's constitution allows the national committee to convene a special general meeting of the association at any time it sees fit. Such meeting could have been held immediately prior to the AGM.

My reply of 23 September 1997 mentioned this and described proceedings on 15 September 1997 as a "kangaroo court". I was one of two witnesses to the proceedings.

In reporting the foregoing facts and my views thereon I am not in any way moving "no confidence" in the national committee. The urgent reforms needed are for its members to recognise that their primary role is one of coordination rather than control, to respect member's rights, and to rise above present highly destructive clash of personalities.

Each member should please write to the national committee requesting unequivocal withdrawal of the resolutions, reference of the dispute for mediation, and protest against power grabbing unwarranted interference in state branch matters.

Keith Potter is a member of the group which helped to found WBA, founder of the Victoria branch, Victoria branch committee member and honorary life member.

Comment on Keith Potter's statement

Brian Martin

Keith expresses great concern about a number of actions by the WBA national committee. I think it is valuable that his arguments be made known to members, whatever they may think themselves. Here I'd like to clarify some points from the perspective of the national committee, as I understand it.

Members of the national committee have for some time been concerned about infighting within the Victorian branch. One of the points of contention was the joint meetings with Law Watch. In a letter to all Victorian members on 28 September 1996, the national executive recommended that an attempt be made to organise WBA meetings separate from Law Watch. At the national committee meeting of 14 June 1997, further concerns, based on minutes of the Victorian branch, were raised about the connection with Law Watch. Shortly after the meeting, Jean Lennane wrote on behalf of the committee requesting evidence that WBA Victoria and Law Watch finances were being kept separate. The Victorian branch subsequently provided no evidence of such a separation and apparently made no attempt to hold separate meetings. The motions at the 15 September 1997 meeting should be understood in light of this history.

Motion 1 was intended as a gesture of good will, given that concerns about Victorian finances still existed.

Business transacted at the National Committee conference call of 15 September 1997

Participating in this meeting of the national committee by conference call were Matilda Bawden, Jack King, Jean Lennane, Isla MacGregor, Brian Martin, Peter McCartney, Greg McMahon and Lesley Pinson, with Keith Potter in attendance. Apologies were received from Cynthia Kardell and Anne Turner.

Motion 1: That the Victorian Branch be reimbursed for its claims on national funds up to 1/3 of 1996 and 1997 memberships. For, 7; against, 1. **Passed.**

Motion 2 (as circulated by Isla MacGregor). Invoking section 23.6 of the constitution, that all delegations which have been assumed by Peter McCartney, Victorian member of WBA, be wholly revoked.

An amendment was put to delay the implementation of this motion for one month, giving a further opportunity for WBA-Victoria and Law Watch to run separate meetings. For, 3; against, 5. The amendment failed.

The motion as originally proposed was put. For, 5; against, 2; abstain, 1. **Passed**

Motion 3 (as circulated by Isla MacGregor). That the National Committee in future not delegate any powers to any individual to act as a representative of WBA until such a time as they have a proven track record.

For, 7; against, 1. **Passed.** In response to a suggestion, the committee undertook to seek to clarify the meaning of "track record."

According to WBA's constitution, the national committee has the power to create or dissolve subcommittees, including branches, and to delegate powers to them. Motion 2 is based on this power.

Contrary to Keith's claim, motion 3 does not abolish branches, but rather refers to decisions about any future branches. It means, as I understand it, that we do not endorse a group as a branch simply because someone rings up and says they are a group of whistle-blowers. We would want to know a bit more about them, such as that they have had a series of meetings.

Constitutions are complex and sometimes contradictory things. Keith

is right that section 21 requires that removal of office bearers can only be done at a general meeting. Section 21 refers to the national committee, but by extension it implies that removal of branch office bearers can only be done at a general meeting of a branch. This is not the same thing as removing delegations under section 23. My understanding of motion 2 is that Peter McCartney remains Victoria branch chair, but that his delegations are removed (e.g. membership of the national committee; authority to write on behalf of WBA).

The issue of vetting members is a source of disagreement. Keith and some other members are in favour of vetting, whereas the strong opinion among national committee members has been opposed to vetting. It remains the case that memberships are approved by the national committee, not by branches, and that membership applications should be sent directly to the national address.

As for Keith's proposal for a special general meeting to be held before the AGM, this was impossible because there was insufficient time for notice to be given to all members as required by the constitution. As for the agenda for the AGM, any member may submit items of business to the national secretary at any time. They will then be addressed at the next general meeting.

Brian Martin is national president of WBA.

Accountability for them...and for us? A comment on Keith Potter's statement

Christina Schwerin

Keith Potter cites as the major genesis of the problem which has resulted in the twelve-month long internal conflict in the WBA Victoria branch as: "false public accusation by a high profile whistleblower that Mr McCartney and myself [Keith Potter], and a former Victoria branch chairman, had 'sold out to the police'."

It is well recorded and stated that an apology was immediately called for, and not received. It was in fact pursued relentlessly, forcefully and threateningly, ... but not received.

The truth of the matter is that there existed all the signs and indications, at the time, of a "sell out", and explanation and clarification was due and necessary, in order to ensure the ongoing trust of members, but no explanation was ever given, only demands for apology.

Surely, as we expect accountability all round, we should be willing to concede that if we hold committee positions, we ourselves should expect to be held accountable.

It might be upsetting if by our actions or failure to act, we might somehow find ourselves called to account, but a committee member should be willing to do that.

That "formal mediation was offered" is not as wonderful as it reads. Those upset were offered *only* the opportunity of mediation carried out by the same three members in whom they had lost trust.

The national executive sent suggestions for resolution of the conflict—in fact five or six letters in all, painstakingly constructed to be reasonable, helpful and objective. One of the suggestions put forward was outside mediation. The offer was even made to locate and approach suitable Melbourne-based mediators. There can be no justifiable condemnation of the national executive in regard to their efforts to find a solution to the ongoing, bitter turmoil.

All suggestions put forward by the national executive were harshly rejected and criticised.

The only action WBA Victoria executives were willing to accept from the national body was the use of their higher authority to force an apology from those members seen as offenders, under threat of expulsion from WBA.

Such action on the part of the national body, under the circumstances that existed, would have been unreasonable and inappropriate. In fact, it would have displayed a total "disrespect for the members' rights".

It is far too late now to continue pressing for forced mediation of the cited dispute. It was mishandled at the time by those who would allow only one end result, and were not open to a peaceful, conciliatory resolution of the matter.

Those members who broke away from the original group in September-October 1996 can no longer be considered to be the "minority faction". There have been two groups now that

broke away from the original group and these have merged to form a separate group, with new members joining with them, to form the majority faction, as it turns out. Meetings of the original group usually total ten to twelve attendees. Occasionally there might be four or five more, but of the total number that attend five to six are Law Watch members only. I meet with the new group.

I do agree that the "urgent reforms needed are for its [Victoria branch executive] members to recognise that their primary role is one of coordination rather than control".

It is clear when reading through the correspondence, minutes of meetings, etc., which were exchanged between WBA Victoria branch and the national executive on this very exhausting and self-defeating matter just where the "power grabbing" problem lies.

At one point the criticism is that the national committee "interferes in branch matters". At another, the criticism is that "the national committee refused to intervene."

It would seem that the answer could well lie in having in place at the beginning of each year, both at branch level and at national committee level, at least two outside mediators, in case of internal conflict. These should have some background in the whistleblowing experience. They should be appointed at each AGM.

At the same time, members are within their rights to expect and require that their executive committee be accountable to members in what they do and how they represent the wishes of the members of WBA.

Christina Schwerin, from Victoria, is a member of WBA's national committee.

Minutes of the 1997 WBA Annual General Meeting

For information of members, the unconfirmed minutes of WBA's 1997 AGM are given here. They will be tabled for approval at the 1998 AGM.

MINUTES OF THE WHISTLEBLOWERS AUSTRALIA INC. ANNUAL GENERAL MEETING HELD IN CANBERRA ON SUNDAY 28 SEPTEMBER 1997

Meeting Opened: 10.05 am
National President Brian Martin welcomed members and canvassed suggestions for the format and conduct of the meeting. It was resolved to finalise all necessary business and, if necessary, defer the strategy discussion (scheduled for 11.00 am) until later. An attendance record was circulated.

Present: Brian Martin (Chair), Jim Regan (Minutes), Grahame Wilson, Cynthia Kardell, Brian Coe, Christina Schwerin, John Feo, Neville Ford, Ross Sangen, Jean Lennane, Ian Buchanan, Feliks Perera, Stewart Dean, John Wagner, Cynthia Wagner, Rachael Westwood, John Russo, Peter McCartney, Alex Tees

Apologies: Isla MacGregor, Greg McMahon, Lesley Pinson, Matilda Bawden, Anne Turner, Charles Willock, Louise Roy, Neil Mayger, Bob Taylor, Richard Blake, Victor Wan, Ray Windsor, Mick Skrijel, Ted Rosewarne, Paul Maher, Jack King, Andrew Allen,

Minutes of the last AGM on Sunday, 1 December 1996, completed by then NSW Branch Secretary, Mr Alex Tees, were circulated.

Peter McCartney raised certain objections to the minutes and concerns that Department of Fair Trading provisions may not have been complied with. He suggested that notification of the current AGM was unconstitutional for reasons set out in his Statutory Declaration (Annex A). The issues were discussed with consensus that the meeting proceed subject to the incoming national committee rectifying any shortfalls.

Minutes Accepted: Moved, Jean Lennane. Seconded, Grahame Wilson. Carried.

Reports

Jean Lennane (national vice-president)

Whistleblowers and WBA now have a much higher profile and level of recognition. The Federal Government has however, failed to introduce any form of whistleblower legislation. Nevertheless, much has been achieved with significant wins here and there. Where in earlier years whistleblowers ended up out of the workplace, many now are going back to the workplace and with some support from revised codes for dealing with them.

The down side: NSW police seem to be slipping again with the Research Project not yet released. With paedophilia and Australian Child Protection Alliance, paedophilia is a big and hot issue. The overall picture is pretty bad and reveals significant cover-up.

The situation with whistleblowers in Victoria is regrettable. On the other hand congratulations are in order for most of the organisation with thanks to a number of individuals who have done an enormous amount of work.

ACT - Ian Buchanan

No Branch is functioning in the ACT at present. Bill Wodrow, myself and others need to organise a proper branch in the ACT. We were pleased to hear Jean Lennane given media coverage, especially on ACT radio and to hear Brian Martin quoted a number of times. Whistleblower legislation has been passed by the ACT Parliament, however, like most whistleblower legislation, it is pretty weak.

NSW - Cynthia Kardell

Report as tabled (Annex B). NSW is fortunate and going from strength to strength. We have well attended branch and 'caring and sharing' meetings. The greatest strength is the caring and regular contact through which we encourage individual whistleblowers to move from a personal to a general focus. In the past 12 months we have set up a branch office which we hope to be a resource for members. We have had a number of visitors to branch meetings and are pursuing certain pushes and

surveys concerning the ICAC, HealthQuest and other issues. The year has been profitable in generating goodwill and improved dealings with the ups and downs facing us as an organisation; we are doing better at this. (The benefits of 'caring and sharing' were canvassed generally by various members.)

Tasmania - Report from Isla MacGregor read out by Brian Martin

Victoria - Peter McCartney

The Victorian branch has a range of cases running and is investing a lot of work into various of these. In these it is particularly noticeable how difficult it is to overcome bureaucracies in the legal arena. There has been absolute abuse of power to prevent matters being put correctly. (Various cases cited). Attacks by bureaucracy are making legal hurdles more difficult to get over. Developments in the cases of Mick Skrijel and Ray Hoser were outlined.

South Australia - Report from Jack King presented by Jean Lennane

The Whistleblower Protection Act is arguably the best in Australia, however, it is no comfort to whistleblowers as the Ombudsman neglects to do anything. Jack reports progress, but the Ombudsman is immovable. Jack King is now using the Act to send out a letter about the Judge who convicted Tony Grosser who blew the whistle on paedophilia. Jack has sent letters to a wider audience, however, there is still no action.

Neville Ford outlined difficulties with WBA in Victoria. Neville and others are now meeting as a separate group or faction to that headed by Peter McCartney.

Feliks Perera raised concerns that cases of Karl Konrad and Mick Skrijel had not been exploited.

Peter McCartney tendered minutes of Victoria's AGM on 2 March 1997.

Meeting Adjourned: 11.25-11.50 am

Financial Reports and Statements. These were tendered by Cynthia Kardell on behalf of National Treasurer Anne Turner. Grahame Wilson expressed concern at memorandums from Lesley Pinson and Isla MacGregor which purport to bear on WBA's financial affairs. Discussion deferred to General Business. Cynthia Kardell spoke as to the accuracy of the accounts and statements as presented. **Accounts Accepted:** Moved, Jean Lennane. Seconded, Christina Schwerin. Carried Unanimously.

Policy Issues

Acceptance of proxy votes discussed. Proposal by Neville Ford (Seconded by Jim Regan) that, "Strict plus averment proxies are accepted as valid by this AGM". Carried unanimously.

Motion

"For reasons of practicability, members should not assume that correspondence to WBA or national committee members is routinely circulated within the committee. Members who wish to send correspondence to committee members should do so directly by obtaining a list of names and addresses from any committee member or, if this is not feasible, providing copies in stamped envelopes for addressing and posting by any committee member."

Carried unanimously.

Motion (as amended)

"That WBA national committee, branch committee and members should take suitable measures to avoid conflict of interest, secret commissions (unless otherwise disclosed), abuse of trust and misrepresentation. If conflicts of interest arise, they must be disclosed. In particular, members should not take advantage of their role as fellow member or confidante to solicit business, special favours or sexual relationships. Members must be accountable for their behaviour and not be given protected status as a result of their membership. WBA members must be informed of appropriate behaviour in this regard."

Motion Carried. (Alex Tees abstaining (recorded in minutes at his request)).

Special resolution (as amended)

"Section 9 of WBA's constitution shall

be replaced by the following:

9. Register of Committee Members

(1) The public officer of the association shall establish and maintain a register of committee members of the association specifying the name and address of each person who is a committee member of the association together with the date on which the person became a committee member.

(2) The register of committee members shall be available from the public officer on request and free of charge to any member of the association.

Carried Unanimously.

Motions - Access to Membership Lists (as amended)

Motion 1: WBA's full membership list is available to members of the national committee and the state listings are available only to members of relevant branch executives. **Motion Defeated** (Alex Tees abstaining).

Motion 2: WBA's full membership list is available to members of the national committee under the proviso that the list is not distributed, copied or allowed to be viewed by any other member or person. **Motion Defeated.**

Motion 3: Members henceforth have the option of allowing or disallowing circulation of their information on the membership list beyond the national secretary, treasurer or public officer. **Motion Carried.** (Alex Tees abstaining).

Election of Office Bearers and National Committee

Elections conducted by Feliks Perera as Returning officer

National President

There being only the one prescribed nomination for the office of National President, **Brian Martin** was declared elected.

Senior Vice-President

There being only the one prescribed nomination for the office of Senior Vice-President, **Jean Lennane** was declared elected.

Junior Vice-President

There being only the one prescribed

nomination for the office of Junior Vice-President, **Isla MacGregor** was declared elected.

National Director

There being only the one prescribed nomination for the office of National Director, **Matilda Bawden** was declared elected.

Secretary

There being only the one prescribed nomination for the office of Secretary, **Lesley Pinson** was declared elected.

Treasurer

There being two nominations for the office of Treasurer, Vince Neary and Anne Turner, this election was preceded by lengthy and precise discussion related to a letter from Lesley Pinson challenging the nomination of Anne Turner as Treasurer and a separate memo from Isla MacGregor and Matilda Bawden jointly endorsing Pinson's sentiments. Jim Regan recorded that he had been twice tempted to walk away from WBA over differences with Pinson and urged members to objectively consider Pinson's apparently unfounded allegations. Grahame Wilson traced his careful examination of the accounts effectively rebutting Pinson's case against Anne Turner. Cynthia Kardell challenged inconsistencies in Pinson's allegations and detailed factual evidence in relation to accounts and membership lists.

A secret ballot was conducted with 27 votes for Vince Neary, 38 for Anne Turner with one abstaining. **Anne Turner** was declared elected as National Treasurer.

Committee

Nominations (including from the floor) were accepted for the following:

Neville Ford
Greg McMahon
Feliks Perera
Christina Schwerin
Rachael Westwood
Grahame Wilson

There being no further nominations for committee positions, all were declared elected as ordinary members of the committee.

Meeting Closed: 2.47pm

Whistleblowers Australia: regional contacts

ACT contact: Shane Carroll, 02-6231 2498

New South Wales

"Sharing and caring" meetings are held every Tuesday commencing at 7.30pm at the Presbyterian Church Hall, Campbell Street, Balmain

Contact: Cynthia Kardell, ph/fax 02-9484 6895

Goulburn contact: Rob Cumming, 018-483155

Wollongong contact: Brian Martin, 02-4221 3763

Queensland

Whistleblowers Action Group contact:

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

South Australia contact: Jack King, 08-8278 7853

Tasmania

Public Interest Network contact:

Isla MacGregor, 03-6239 1652 (b/h)

Victoria contacts:

Neville Ford, 03-9560 8276

Feliks Perera, ph/fax 03-5078 1220

Christina Schwerin, 03-5144 3007

Western Australia contact: Avon Lovell,
08-9242 3999 (b/h)

relevant web site:

<http://www.uow.edu.au/arts/sts/bmartin/dissent/>

Whistleblowers Australia
PO Box U129, Wollongong Uni NSW 2500

Support Whistleblowers Australia

- Become a member: joining fee \$5, annual membership fee \$20.
(The membership fee includes a subscription to *The Whistle*.)
- Subscribe to *The Whistle*: \$25 or \$12 (low income) per year.
- Give a donation: money or your time and expertise.

WBA income is almost entirely from memberships and individual donations.
Its activities depend entirely on voluntary work by members and supporters.

If this box ☐ is ticked, your annual membership fee or subscription is due.