



# Information Overload

Issue 28, December 2004

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## Welcome:

Season's greetings to one and all. I would like to take this opportunity to welcome all our new subscribers, thank you for joining us, we hope you enjoy reading.

You may notice a slight change in format to this edition of the newsletter. Having received several comments we have made the decision to change the format so that it is easier to read on screen. As always, if you have any suggestions or would like to see us cover any other topics, we would love to hear from you. Just send an e-mail to [training@iea.com.au](mailto:training@iea.com.au).

Anyway, onto the topic of this month's edition of the newsletter, this month we have decided to look at the subject of "whistle blowing". For those train spotters and sports coaches out there, I am going to have to disappoint you I am afraid, in the case of this newsletter a "**whistleblower** is someone in an [organization](#) who witnesses behavior by members that is either contrary to the mission of the organization, or threatening to the public interest, and who decides to speak out publicly about it (definition taken from - <http://en.wikipedia.org/wiki/Whistle-blowing>)."

On a personal note I would like to thank everyone who has taken the time to give feedback on the newsletters during 2004, and would like to wish everyone a happy and safe yuletide.

I look forward to speaking with you again in the New Year.

Lorraine Bradshaw  
Marketing & Training Coordinator

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## In this Issue we will be looking at:

- The Case for Blowing the Whistle
- To "Dob" or not To "Dob" that is the Ethical Question
- Australian Record Retention Manual (ARRM) Update
- A Thought to Ponder.

## The Case for Blowing the Whistle

The number of corporate collapses and scandals involving large organisations in recent times has brought the issues of corporate governance and whistle blowing to the forefront of the attention of government, media and the general public. Gone are the days of skeletons in closets and "we don't like to talk about things like that". Corporate collapses and scandals are big business in themselves, with the "entertainment industry" using the material to make squillions. Who hasn't watched "The Insider" starring Russel Crowe? For those of you who haven't watched the movie, it depicted the story of Jeffrey Wigand and his role in exposing the Tobacco scandal, revealing that executives of the major tobacco companies knew that cigarettes were addictive and that they added other carcinogenic ingredients to the cigarettes.

Other notable whistleblowers in recent times include Cynthia Cooper of WorldCom, Coleen Rowley of the FBI and Sherron Watkins of Enron. However, in order for credible allegations to be made, they require significant evidence. Coleen Rowley documented her concerns about the failure of the FBI to act on specific pre-September 11, terrorist information in a 13-page memo to the FBI's director. Sherron Watkins documented a series of audit reports to Enron CEO Kenneth Lay. Neither disclosure was anonymous. It does appear that in all cases, in order for credible allegations to be

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made, they need the backing of significant evidence of wrongdoing. <http://theage.com.au/articles/2003/01/12/1041990177705.html>? (may require login).

Of course these publicly scrutinized cases appear to be just the tip of the iceberg, with many more cases not making it into the media spotlight. For example, in 1996 Barry Adams, a Registered Nurse with a New England hospital blew the whistle on unsafe health care practices that he observed in his work setting. Over a three-month period he precisely followed the organisations own guidelines on reporting to hospital administrators, instead of using the information to investigate and correct any areas of concern. Adams was fired.

Information taken from the *Online Journal of Issues in Nursing Article published Dec. 31, 1998 Whistle blowing As A Failure Of Organizational Ethics*, by James J Fletcher, PhD, Jeanne M Sorrell, PhD, RN, Mary Cipriano Silva, PhD, RN, FAAN [http://www.nursingworld.org/ojin/topic8/topic8\\_3.htm](http://www.nursingworld.org/ojin/topic8/topic8_3.htm)

The decision to blow the whistle on illegal or unethical practices in the workplace is not one that can be taken lightly. As we have seen with the cases of Enron, Worldcom etc, the intense media scrutiny, harassment and vilification of the person lifting the lid on such activities cannot be under estimated. Recent legislation has attempted to protect those people who do decide to "go public" with their findings. In the United States, the introduction of the Sarbanes-Oxley Act of 2002 which was introduced after the collapse of the energy giant Enron and other corporate giants, now requires corporations to have systems in place for the internal reporting of misconduct to supplement surveillance by government agencies and reporting by third party organisations, such as accounting firms.

After the energy giant Enron collapsed, the role of its auditing firm - Arthur Andersen was investigated. Arthur Andersen, one of the "big 5" accounting firms, had been retained by Enron to ensure investors could rely on the company's financial statements. However, Andersen was also a major business partner – soliciting and selling millions in consulting services to Enron. Added to this conflict of interest, Andersen was also responsible for some of Enron's internal bookkeeping, and some of Andersen's executives ended up taking jobs at Enron. Whilst Andersen took the steps to fire the Enron lead auditor – Mr David Duncan, after it was discovered that he had ordered the destruction and shredding of documents pertaining to the audits performed by Andersen's, it was not enough to save the organisation from being charged with obstruction of justice by the US judiciary system, effectively sealing its fate.

In addition to Sarbanes-Oxley, the 2002 Notification & Federal Anti-Discrimination and Retaliation Act (aka [No FEAR](#) Act) makes Federal agencies individually accountable for violations of anti-discrimination and whistleblower protection laws.

In Australia, the introduction of the Corporate Law and Economic Reform Program (CLERP 9) is the Australian government's proposal for corporate governance reform. These reforms aim to remove conflicts of interest and encourage executives to maintain an open dialogue with shareholders.

The main changes include:

- Companies to deny or confirm market rumours affecting share prices
- Auditors must report companies trying to bribe, coerce, manipulate or mislead them
- Employees blowing whistle on corporate misdeeds to be protected
- Cost of executive and director share options to appear in financial statements by 2003
- Top 500 listed companies must have audit committees
- Audit partners to change the companies they audit every five years
- \$1m fines for insider trading, market manipulation and failure to meet disclosure requirements
- Stockbrokers, analysts to disclose financial interest in stock on which they are reporting
- Shareholders able to email questions for posting on company web site instead of attending annual general meeting (AGM)

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- Auditors required to attend AGMs and answer “reasonable” questions
- Shareholders able to vote electronically and over the internet at AGMs
- Audit firms must reveal fees when selling both audit and non-audit services to corporate clients
- Tougher restrictions on corporate clients issuing loans to auditors  
(source: *Sydney Morning Herald*, 19/9/2002)

Standards Australia released a standard (AS 8004-2003) on Whistle blowing Protection Programs For Entities during 2003. The standard is a useful start in the encouragement of best practice within organisations and community acceptance of whistle blowing in an environment where reporting is sometimes seen as “dobbing” or “unAustralian”. However, like associated corporate governance standards it is not mandatory and does not provide effective legal protection for whistle blowers.

## To “Dob” or not To “Dob” that is the Ethical Question?

There are a number of questions to this debate:

- Under what conditions is whistle blowing the right thing to do?
- When is it in the public’s interest to do so?
- At what point does company loyalty no longer play a part in the decision to make information known to the wider community?
- And what of the loyalty to one’s colleagues?
- How much is the whistle blower willing to risk by going public? By “going public” the whistle blower is going to be brought under intense personal scrutiny themselves, usually in order to deflect the issue of any wrong doing with attempts made to discredit the integrity of the whistle blower themselves.

Of course the other side to these questions are:

- What are the motives driving the whistle blower?
- Who is going to benefit from the disclosure? And
- Is it a case of attention or revenge on the part of the whistle blower?

Whatever the reason for the disclosure, “dobbing in” or whistle blowing, the question remains – who is the “ultimate winner”?

It appears that those organisations who already have an open and honest interface with their staff, shareholders and “customers” will have no problem modifying their procedures to incorporate the changes dictated by corporate governance with legislation such as Sarbanes-Oxley and CLERP 9, whereas those organisations who choose not to, won’t, and will continue to run the risk of “being found out!”

A good internal whistle blowing program aims to:

- Underpin corporate standards and codes of ethics (or codes of ethics that cover a particular profession)
- Encourage employees to bring legal, financial or other malpractice to the attention of an internal authority for action on a timely basis

- Minimise the organisation's exposure to the damage that can occur when employees circumvent internal mechanisms
- Obviate the need for intervention by another body, eg in response to inaction after concerns were brought to the attention of an authority within the organisation

Other impediments to a successful internal whistle blowing program may include:

- lack of trust in the organisation's system for identifying and responding to malpractice
- perceptions that whistleblowers are "dobbers"
- concerns about retaliation in the workplace (including lack of legal protection)
- concerns about potential [defamation](#) or other litigation
- expectations about little support from unions and alienation from peers

However, red tape, under-staffing, and indifference by the organisation may preclude the use of such systems, and may determine that the "story" needs to "get out there" whatever the personal cost in order for a satisfactory conclusion to be reached.

## Australian Record Retention Manual (ARRM) Update

From time to time we like to bring you up to date with work being carried out on the Australian Record Retention Manual (ARRM). Work on the manual is an on-going process and our legal researcher has found what has to fall into the strange but true category.

The (WA) Income Tax Assessment Act 1937 says in section 242 - **Business records in the English language to be kept**

(1) Every taxpayer carrying on a business shall keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained.

(2) Any taxpayer who fails to keep the records required by this section shall be guilty of an offence, and for every such offence be liable to a **penalty of not less than one pound and not more than fifty pounds.**

We are of course looking at other acts to determine the correct ruling and penalties – but until such time as we do find it – does anyone have a spare couple of quid they can lend me?

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### A Thought to Ponder:

"All truth passes through three stages. First it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self evident."

**Arthur Schopenhauer (1788-1860)**

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Your comments and suggestions on the subject of this newsletter are most welcome. Or if you would like to see other issues covered in future editions, please email [training@iea.com.au](mailto:training@iea.com.au)

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