

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

# *The*



# *Whistle*

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At the WBA conference, November 2022, from left:  
Peter Fox, David McBride, Troy Stolz, Kent Quinlan, Jeff Morris, Sharon Kelsey

### Thirty years on and still they do us proud

Cynthia Kardell

IN MARCH 1992 a group of hardy souls gathered on a boat on Lake Macquarie to establish Whistleblowers Anonymous. By March the following year it had morphed into Whistleblowers Australia. So, depending on where you start counting from, we're thirty years old and still pushing for legislation that is more than just words on a page when it comes to affording us protection. Luckily, we've remained true to our roots, getting the press and our politicians and others involved sooner rather than later whether anonymously or not, depending on what works best to get the job done.

Our annual conference on Saturday 19 November marked a return to in-person meetings after Covid-19. And if the class of 1992 against the backdrop of the Wood Royal Commission into police corruption was anything to go by, then the class of 2022 didn't disappoint.

Thirty years on, they're sassy, irreverent, cutting and very droll when it comes to getting under their tormentor's skin. Because yes, those tormentors are even more brazen and in-your-face than before. Nothing is beyond the pale in a world where national security interests remain code for covering up serial lying and hypocrisy on an industrial scale.



Thirty years have seen a lot of change driven by the internet and smartphones on both sides of the fence and, yes, by legislation. The good news is the class of 2022 are seen in the media as both worthy and newsworthy. They have become household names, with their stories sparking dramas and documentaries. They've proved more than a

match for their would-be tormentors and they've done us proud, thirty years on from where it all began with the class of 1992.

**Carol O'Connor** wondered about calling her story "In plain sight" because child sex trafficking was always in plain sight. Even though it took 30 years for New Zealand, like Australia, to do more than turn away from their shameful indifference.

I wrote about Carol's story in the October 2021 issue of *The Whistle* after one of those children, now a thirty-something woman, who I only know as M, wrote to Carol through a former colleague.

Carol used a timeline and a couple of other slides including a page from M's letter, to tell her own story through the window offered by M's letter. Because M understood just how scared Carol was when a man broke into her home one night and bashed her. And how terrifying it must have been to realize just how many in positions of power were involved. She had nowhere to go and eventually she had to flee her own country for the safety of Scotland.

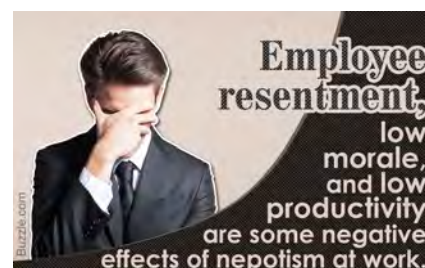
M was only a child, but she knew why they were fellow travellers, saying to Carol across the years, "You listened to me. And I was scared for you. I thought you were dead. I thought they had killed you. I thought it was my fault." It's a harrowing story that rings down through the ages and, even today, we still mostly turn away. Carol didn't. M knew she didn't and in the end that was what mattered to M in the thirty years it took for the state to take it in hand and for Carol to process the hurt and the harm.

Carol hasn't been idle in the intervening years. She's recently completed a doctoral thesis on the harm done to 21 whistleblowers in the UK. What else, pray tell? Congratulations Dr O'Connor.

**Jane Anderson** used her whistleblowing work as a case study to assess the likely financial and other costs incurred by her employer in deciding not to disturb the status quo. I think she's on to something here, given the way economic policy is routinely used to justify

investigating only the very serious things.

Unmeritorious recruitments are very common in a world where nepotism is another word for networking, where jobs for the boys are seen as cost-efficient and applying the rules an unnecessary use of red tape. Clearly, if you could persuade your employer that it would be cheaper to be on the side of the angels, rather than worry about how it might play out in reputational terms, then we'd have won the war, not just the battle, and building an ethical culture at work would become a whole lot easier.



Jane raised concerns about a series of potentially corrupt recruitment processes over a two-year period to the end of last year. Appointments were made with no regard to principles of merit-based recruitment. Jane pressed them further, thinking her six PIDs showed a pattern that should have been identified much earlier. Unfazed, her employer questioned whether she had even made a PID and the manager went on paid leave for reasons that remain a mystery. I suspect she's taken stress leave after being "counselled" for misconduct and that the management prefers to resolve the impasse as a worker's compensation claim rather than sack her outright. It's a nasty game that relies on manipulating privacy and confidentiality laws to keep each strand of the story separate so that the story can't be brought together easily.

Jane remained focused, taking her employer's failures to the Ombudsman for its consideration. The Ombudsman has since advised it has referred the "fraudulent" recruitment to ICAC. Never one to give up, she is waiting to hear whether they might consider it prudent after all to refer all of the PIDs and circumstances to ICAC.



Jane estimates her employer's costs at about \$1.7 million to avoid dealing with the PIDs: that's a lot of money to ensure soft corruption remains their operational norm. If Jane could get the Ombudsman to take it up as an issue, she would have pulled off the challenge of our times.

**Bernard Collaery's** talk was fraught with difficulty from the outset. Try as we might, he couldn't be connected on Zoom. We had our Brian Martin with us from Wollongong and Jeannie at our end, but no Bernard. We wondered out loud whether ASIO had nothing better to do, but decided it was more likely Zoom had failed us when we needed it most.



So, after fussing around for quite a while we settled for amplifying a telephone call through the venue's system. Mind, he didn't disappoint. I have seldom seen an audience so locked on.

We all know the story, so he could cut to the chase: focussing on the dreadful outcomes for him, Witness K and our country. It was a measured, but deadly account. Deadly in the way our Indigenous cousins use the term.

Three in the audience lined up to ask questions, myself included. I wanted to know whether, rather than pardon Witness K, we should be seeking to have the charges withdrawn. Bernard believes the charges should be withdrawn and the conviction openly expunged from the record both for us as a nation and Witness K, as he needs ASIO's permission for even the smallest of things like venturing outside a 12-kilometre radius.

I followed up with another question, asking whether once in government he thought Labor had picked up where the Coalition had left off? The Coalition had been helping Woodside to block Timor L'este's plans to process its oil and gas in their country a short 40 kilometers away. Woodside is pushing the Timorese to continue using the Darwin LNG plant more than 400 kilometers away. They are considering other investors, like China. Bernard believes our

current government is helping Woodside on a number of fronts, in return for them keeping our government's secrets secret. Like how billions of dollars in helium gas had been hidden from the Timorese for decades: something that former Victorian Labor premier Steve Bracks says was "our betrayal of the Timorese".



Bernard also called for a royal commission into our spy agencies along the lines of the Hope Royal Commissions in 1974 and 1984. One thing is very clear, the Dili bugging scandal still has a long way to run.

**Sharon Kelsey** has a steely resolve well suited to whistleblowing. It was there as a young girl when she decided to become a police officer and later when she became a lawyer with Victoria's watchdog, the Independent Broad-based Anti-Corruption Commission. I suspect that becoming the chief executive officer of the Logan City Shire Council offered a way to put some of her ideas into practice. Which may be why, within weeks of taking the job she raised her concerns about the mayor's conduct with Queensland's watchdog, the Crime and Corruption Commission (CCC): the former mayor will face trial next March for official corruption and misconduct offences and perjury. Sharon was unceremoniously and very publicly dumped. The local media and seven of the councillors sided with the disgraced mayor and Sharon's personal story slipped from public notice as the politics played out in spectacular form with the Local Government Association eventually forcing the resignation of the CCC's chair and two major inquiries into it and Queensland's public service.

But Sharon doesn't give up easily. She adapts and fights again and since the conference she's had the win that potentially puts her in the winner's corner. On 25 November Sharon won with costs in the court of appeal. Her application will return to the industrial commission to determine her right to appeal her dismis-

sal. Local media still don't want to know and the former mayor and the seven councillors are having to pay their own legal costs after all.

Sharon used her talk to do a bit of informal research into why whistleblowers do not always pursue a remedy all the way to the end. She set the scene by canvassing the many reasons why people don't blow the whistle, before asking about 35 of those present to randomly select a ticket with a reason for bailing out written on it. Then each participant was asked to sit down when the reason on the ticket reflected their own reasons for pulling out. It seems we weren't any different from most. Perhaps it's fitting though that Troy Stolz had randomly selected the ticket for never giving up.

Sharon got us laughing, a lot. She was strutting her stuff when the NSW Ombudsman and his assistant arrived outside. We were clearly in our element and loving it. I watched and found myself wondering how many whistleblowers the Ombudsman counts as colleagues and peers and whether what he was witnessing fitted with his preconceptions of who we were. Perhaps we were not the mob he was expecting?

**David McBride** has become very well known since taking his allegations to the court of public opinion. The ABC and Fairfax press ran with it at every turn and to date, at least three others have come forward, but David is the only one facing criminal charges. His actions forced the former Government into establishing an Independent Office of the Investigator to prosecute the alleged murders identified by the Brereton Report: although it is very clear the government would've done none of this had they been able to get away with it. David is the sacrificial lamb to ease their guilty resentment after being caught out.

David is a lawyer. He's trained to apply the law. He explained how early in his military career he applied the law unflinchingly, at the direction of his superiors without empathy or any real understanding of the person wanting his help. He admits to feeling ashamed now. It was a tick-the-box exercise at the direction of his superiors but not, as it turned out, his betters.

When he decided to lodge a civil case under the federal Public Interest Disclosures Act, he no doubt thought he was in

with a chance. But when the Commonwealth Director of Public Prosecutions (CDPP) filed an application last October to stop him using his expert evidence — ostensibly in the national interest — he thought long and hard before deciding to pull the rug out from under them. He withdrew his case, saving us from having to listen to the interminable hogwash about their national security concerns. He says after all, he is content to ask his peers in a jury trial whether he's done anything that would warrant gaol time.

David mused out about what that day might bring, wryly suggesting he might have to get some fashion advice from Sharon. He has the gift of the gab as they say, and it works very well for him. He managed to get his message across and us all laughing at them, which is not a bad thing when so much of what the Commonwealth has done is laughable, even though it's a major threat to all of us.

I think David wants the current government to be held responsible for refusing to exercise its own judgment in our national interest. David is betting the Albanese government will try to pin any guilty verdict on the former government, which means David is now the sacrificial lamb on two fronts. I ask you, when have things ever been different?

**Troy Stolz** used a list of media reports laid out in chronological order to run a counter-narrative against the claims being made by ClubsNSW. Even as I think of him scrolling down from the earliest times, I am smiling. Troy has a droll sense of the absurd and his ridiculing ways work really well as a storytelling device. ClubsNSW has done some remarkably silly things and Troy has a mind to lay it all out using truth, liberally laced with laughter and derision. In history it's always been a potent mix for the good.



Troy claims that billions of dollars in proceeds of crime are being funnelled through your friendly club's pokies, so you can understand why they don't like

him. They like him even less since NSW's Crime Commission backed him in on his claim last October, essentially labelling them your friendly neighbourhood money-laundering service, thanks to 86,640 pokies. Then, after five days under cross-examination in early December, the federal A-G's office weighed in, contacting the parties with its concern that ClubsNSW might be abusing parliamentary privilege. At the time his would-be tormentor was trying to negate any privilege he might have had in contacting independent MP Andrew Wilkie.

Troy is terminally ill with cancer. He says it has liberated him as he really has nothing left to lose. Some might say he's crazy brave and in a funny sort of way, they'd be right. I think he's already won, and they know it.



Troy Stolz

#### Postscript

I also invited the **NSW Ombudsman Paul Miller** and his assistant Louise Lazzarino along to talk about the new Public Interest Disclosures Act 2022. It won't take effect until October next year because his Office has been tasked with introducing it to the public service. I wanted to know what the Government thought the problem was with the current act and how the new act would fix it.

The vexed question of whether a PID is a PID remains. The solution appears to be to allow PIDs to be made almost at the drop of a hat to anyone and everyone. I wanted to know what to do under the new act if opinions differed. Paul said his office "could mediate." I admit I lost interest after that. I was wondering, 30 years on, why having an internal

PID investigation unit still wasn't the answer? Mind it would have to be legally independent of the agency in all the decisions it made and independently funded. With the unit and the whistleblowers entitled to refer to a PID openly, like you do a filing in a court, with any subsequent interaction between the unit and whistleblower seen to be whistleblowing. Both could then operate out in the open, free of the coercion enabled by the misconceived privacy and confidentiality settings that serve only to ring-fence the whistleblower.



Paul Miller, NSW Ombudsman

Jeff Morris confirmed my worst fears when he volunteered that he'd attended the same presentation at another venue. Mind I don't envy the Ombudsman: his is an impossible task.

Cynthia Kardell is president of Whistleblowers Australia.

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## Financial costs associated with whistleblowing

Jane Anderson

WHEN ORGANISATIONS engage in fraud and cause hazards, the costs to society can be huge. Exposing these problems sooner rather than later is beneficial to society and often to the organisation. Then along comes a whistleblower to expose the problems, and all too often the whistleblower is subject to reprisals. This imposes large costs on the whistleblower and on the organisation. My aim is to illustrate the magnitude of these costs.

The All Party Parliamentary Group Whistleblowing, UK, issued a report in July 2019 titled *Whistleblowing The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it*. The report estimated the annual financial costs to organisations in whistleblowing cases to be in the millions of

pounds. Yet financial costs to the organisation often seem to become submerged beneath many other factors. My case study explores the financial costs associated with a whistleblower disclosure incurred by a state government institution.



In this example, the whistleblower reported corruption and wrongdoing principally relating to recruitment, procurement and fraud internally to management. The issues started with relatively low-level recruitment wrongdoing and escalated to include corruption and fraud — as well as reprisals. Interestingly, the organisation has bucketloads of policies and procedures. Had they been properly adhered to, there would have been no wrongdoing, and none of the costs discussed here would have been incurred.

Public interest disclosures were made to senior management in 2019 about recruitment irregularities and corruption, in 2020 about recruitment irregularities and corruption and in 2021 about recruitment irregularities, corruption, IT fraud and procurement corruption.

Right from the start, the organisation failed to respond appropriately. Had it acted in a timely and effective way, many of the subsequent behaviours and costly repercussions would not have happened. These included corruption, wrongdoing, bullying, reprisals, failure to follow policy, negligence, fraud, malpractice and unethical behaviour. The perpetrators appeared to become increasingly emboldened as time went on, with no apparent consequences for their bad behaviour. Research by AJ Brown and colleagues confirms that failure on the part of an organisation to properly recognise a disclosure and address the entire range of issues raised is often the first step towards adverse outcomes for whistleblowers with resultant costs and damage to the organisation. It also tells us that cases with

greatest complexity, which carry the highest risks of whistleblower mistreatment and other conflicts and costs, are those requiring the most considered decisions. However, these complex cases are so very often those more likely to be met with avoidance or denial from management, further compounding resultant adverse events and costs.

In a familiar story, the organisation managed to turn a highly motivated, experienced and hardworking employee into one who became disengaged, disillusioned and very cross. Kate Kenny and Marianna Fotaki in their article “The costs and labour of whistleblowing” report that only 3% of whistleblowers spend less than 100 hours on disclosure-related activities with 57% spending 100–1,000 hours, 36% spending 1,000–10,000 hours and 3% spending over 10,000 hours. It is quite possible these hours would be more than matched by the organisation. In my case study, team members, human resources specialists, IT specialists, senior managers and corruption officers all spent time on the matters raised, at a total cost I estimate at \$200,000. A pattern of inappropriate recruitment decisions poisoned the entire team leading to a highly toxic, dysfunctional and unproductive workplace with high levels of stress leave and high staff turnover.



Using the Business Victoria cost-of-staff-turnover calculator gave me a figure close to \$720,000 for my case study. Workhuman, a global human resources company, in *The Ridiculously High Cost of Employee Turnover* gives the hypothetical example of a company with 10,000 employees and turnover of 11% costing US\$41.3 million. They go on to relate that high turnover lowers staff morale, damages an organisation’s reputation and decreases productivity, all of which have additional associated costs. For the purposes of my case study, I estimated that lengthy periods of employee stress leave cost \$520,000. The organisation commissioned an ex-

ternal investigation by lawyers and legal fees estimated to cost \$250,000 with staff time providing statements costing an estimated \$75,000.

In summary, my estimate of costs is:

Internal staff costs, \$200,000  
 Staff turnover, \$720,000  
 Employee stress leave, \$520,000  
 Legal fees, \$250,000  
 Staff investigation statements, \$75,000  
 Loss of production, ?  
 Reputational damage, ?  
**Total, \$1,765,000+**

The UK Parliamentary Group, mentioned earlier, notes “The cost of whistleblowing to society amounts to more than the figure on the bottom of a balance sheet.” This would include the almost universal and more familiar psychosocial and other costs to the whistleblower. They go on to acknowledge “the appalling and unlawful treatment of the whistleblowers who by just doing the right thing risk everything to protect others. Despite acceptance that whistleblowers are the single most cost effective and important means of identifying and addressing wrongdoing, they become the target of retaliation by organisations determined to protect their reputation.” Further, “The vast majority of experiences are described as negative and characterised by a hostile culture of fear and blame leading to isolation and to various forms of reprisals and victimisation, such as counter allegations or disciplinary action.” However, to take a different approach, Aiysha Dey and colleagues in a 2021 article found that US whistleblowers were paid on average US\$140,000 under the False Claims Act cash-for-information program which aims to expose corporate fraud. In November 2022, the US Securities and Exchange Commission announced an award of US\$20 million to a whistleblower, the rationale being that the whistleblower’s disclosure resulted in considerable savings to the government.





Since its inception, the SEC program as of 2022 has paid whistleblowers over US\$1 billion while recouping some US\$6 billion, giving it a high rate of return.

The organisation in my case study cannot claim to have been unaware of the matters. Recruitment wrongdoings had been reported by several members of the team. In addition, the last three years of staff satisfaction surveys returned an extremely low score for staff confidence in recruitment. High staff turnover also raised a red flag. An estimated \$1,765,000 has been diverted from being spent as it should have been on services. It could even be suggested that the organisation has behaved in a corrupt manner because it deliberately ignored the warning signs and “involves a breach of public trust that can lead to inequity, wasted resources or public money and reputational damage,” to quote the NSW Independent Commission Against Corruption. It should be noted that had proper processes been followed, none of the resultant corruption and wrongdoing would have happened and had prompt action been taken to act initially then costs would not have been as high.

If organisations counted the dollar costs, they might be willing to take whistleblower accounts more seriously. Might they also respond appropriately to such reports? The monetary costs to organisations are rarely counted and rarely discussed. Perhaps organisations should be obliged to keep records of the costs and publish them in annual general reports. It is time this hidden element of whistleblowing became public.

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## Advocate for things that matter

Sharon Kelsey

LIKE many whistleblowers, my journey has been long and laboured. It started in mid-2017 when I took up the role of CEO for the Logan City Council. Logan is a large local government area in Queensland, situated between the City of Brisbane and the Gold Coast. While the council area doesn't have direct coastline, it hosts some of the precious creeks, waterways and wetlands that make that part of the world unique. It

also has (or had) large swathes of native forest that provided important habitats for native flora and fauna. The Pacific Highway edges its way near the city's easterly border and through part of the more established areas of the city. But the bulk of the city's geographic land lies out to the west, reaching the base of the Tambourine Mountains. This is the part where urban sprawl meets hinterland. You get the picture.



### So, what matters?

Before I took up the role as its CEO, I had been an Executive Director at the Victoria Independent Anti-Corruption Commission (IBAC). I came to IBAC with a history of leading various portfolios in local government ranging from planning and development, through to corporate, legal and business services. As an admitted Barrister and Solicitor, I also clocked up some time at a private law firm and worked as an in-house counsel. But often the part of my career that fascinates people the most is that fresh from school I entered the police academy as a cadet. Each of these jobs shares a common thread. The values of integrity and human rights have woven their way throughout my career. These tenets along with the value of my family are the things that matter for me.

### What happened at Logan?

After starting at Logan as the CEO it didn't take long before people started to share their significant concerns about the council. I told them integrity mattered. With my career history, it was clear that people had high hopes that things would change under my leadership.

In mid-October 2017, I walked my talk and made a public interest disclosure (PID) to the Council and to the Queensland Crime and Corruption Commission (CCC). The nature of the PID and my subsequent disclosures to the CCC are still the subject of court suppression orders. They involve matters that are before the criminal

courts in Queensland. The then Mayor, Timothy (Luke) Smith, is to stand trial in 2023.



Only months after making my initial PID my employment was terminated by a vote of the Council. Mayor Smith did not take part in the vote. He was restrained from participating by a court order pursuant to the first decision made by the Industrial Commission. However, on 7 February 2018 the vote was held with the remaining 12 councillors. It was a 7:5 vote. And there it was, my employment was terminated.

Now, some five years on, and nine Industrial Commission, five Industrial Court and two Court of Appeal judgments later, I am still seeking justice. I have just received the latest in a long line of judicial judgments relative to my claims about why my employment was terminated. This latest decision was made by three justices in the Court of Appeal and importantly, overturns a decision of the President of the Industrial Court. That earlier decision disallowed my appeal application and made an adverse costs order against me. I think this latest decision by the Court of Appeal will mark the critical turning point in my case. It allows me to make an application to the Industrial Commission to seek to appeal its earlier decision that dismissed my claim that my employment had been illegally terminated.

The substantive decision that I am ultimately seeking to overturn can be found at *Kelsey v Logan City Council & Ors* (No.8) [2021] QIRC 114 (PID/2017/3) O'Connor VP. If you are interested in the full carriage of the matter, then all 16 decisions can be found at [www.sclqld.org.au](http://www.sclqld.org.au). You will need to search through the Industrial Commission, the Industrial Court and the Court of Appeal to see all of the

judgements. They start on 1 February 2018 just before my termination.



Sharon's executive team with the former mayor, in the council chambers

### **Being an *Advocate for things that matter***

I have found that many people have advice for whistleblowers. Most of it well-intentioned. In my experience, the best early advice came from a small handful of trusted professionals, mainly lawyers (there, I said it). Note, I also said it was only a small handful of lawyers — I think that qualifies it sufficiently. I have also relied heavily on a small support network. These are mainly family and communities of people that share my outrage. I have been late to rely on the strength and tenacity of other whistleblowers. This was, I now know, to my detriment. In the few short months since I have connected with many of you, I have felt mentally and physically stronger. There is strength in our common ground and in numbers. I value deeply the powerful conversations I have been able to share with many of you. Despite our different routes, it's clear our journeys have been remarkably similar. Your advice is personal, real and sometimes raw but always helpful.

While people don't always have to have a lived experience to provide useful advice, in my experience it helps. Otherwise, people tend to rely on their theoretical understanding of how things should work. Of course, in practice it lacks the real-life ins and outs, ups and downs, and curly corners. It is almost always linear; assumes you start at one point and after various steps, end at another. Such advice replicates an expectation that life itself operates in a similar linear fashion. It never does.

That is why when I have an opportunity to contribute to discussion about things that matter, I jump at the chance. The latest chance was my submission to the parliamentary committee set up to consider the *National Anti-Corruption*

*Commission Bill (Cth) 2022* (the Bill). My submission is public and available on the parliamentary website. I focussed on two aspects, *Public Hearings* and *Whistleblower Protection*.

I contended that public hearings should be held at the discretion of the NACC Commissioner. I consider public hearings to have an important role as an investigatory tool and to be crucial to maintain transparency and openness in integrity matters. You are probably aware that instead of the Commissioner being able to exercise discretion, an "exceptional circumstances" and "public interest" test must first be satisfied.

I also argued for immediate strengthening of whistleblower protection. The role of the whistleblower drives the workings of any integrity system. The Bill included only a basic anti-reprisal provision. As a stand-alone provision it is inadequate. Its focus is too narrow and it lacks sufficient capacity to cover all aspects of how disclosures occur. Without a comprehensive whistleblower protection regime, a weak stand-alone provision potentially suggests protection when in practice, little protection exists. My real concern is that a narrow, limited reprisal provision may pose a greater risk than the ill it seeks to address.

I also questioned the reliance of the integrity system on potential prosecution as the primary deterrent. The experience of state anti-corruption agencies shows the bar to successful prosecution is incredible high, arguably even insurmountable. Yet by sheer number, the overwhelming claims by whistleblowers of alleged reprisal action taken against them suggests they can't all be false.

### **Broad positive duty on NACC to protect whistleblowers**

Drawing on my own experience in Queensland where the CCC was pursuing parallel criminal proceedings, I argued that whistleblowers should not be exposed to further harm by the act of assisting investigations. They should be owed a duty of care by the reporting/investigatory agencies. I became aware that some anti-corruption agencies have historically acted under a misconception that such a duty of care existed, only later to find that they owed no such duty to whistleblowers. With this genie now well and truly out of the bottle, it

is clear that no-one owes the whistleblower a duty of care. I argued that the NACC should owe the whistleblower a positive duty of care to protect them.

### **Whistleblowing protection regime**

Drawing further on my own experience and the subsequent events that impacted my career and life more generally, I proposed that a whistleblower protection regime should include:

- establishing a dedicated Whistleblower Protection Authority
- effective "shield" laws to protect public interest journalism and third-party disclosures
- recognition of whistleblower rights as fundamental human rights
- provision of legal support to pursue rights
- reciprocal recognition of rights at an international level, e.g. seeking asylum
- simplification and ease of access to legal remedies
- whistleblower care and welfare
- consideration of a reward scheme.

This list was never intended to be exhaustive but to prompt the level of the discussion beyond a focus on the deterrent of criminal prosecutions. Frankly, criminal consequences are no deterrent when it matters. Let's not pretend they are. Instead, the focus of reform should be on the real experience of whistleblowers, for it is these stalwarts who continue to pay a high personal cost when the interest they serve is a critical public one.



Former mayor Timothy (Luke) Smith is on the right. Sharon is not the one in the centre.

### Hard to deal with massive corruption in Iran, says whistleblower

Iran International Newsroom

31 October 2022

A WELL-KNOWN WHISTLEBLOWER and investigative journalist in Iran says people in the Islamic Republic political system are not accountable for their performance.



Yashar Soltani

Yashar Soltani, who has spent some time in jail in 2016 for disclosing financial corruption at Tehran Municipality under current parliament speaker Mohammad Bagher Ghalibaf, added in an interview with Etemad Online that the way government treats financial corruption is woefully disappointing.

The multi-billion-dollar case involving the former mayor, a figure close to Supreme Leader Ali Khamenei, ended in the arrest of Isa Sharifi, one of Ghalibaf's deputies and was finally pushed under the carpet although Khamenei in 2018 called for investigation into the case. Sharifi's name came up once again in February 2022 along with Ghalibaf's in a major corruption case at the IRGC, which also remained inconclusive after a few weeks of controversy stirred by rival political factions in Iran.

The controversy about the IRGC corruption case was soon silenced possibly because even former IRGC Qods Force Commander Qasem Soleimani was also involved, as revealed in an audio tape that was

leaked in the public domain presumably by those who benefitted from the revelations.

As a whistleblower who has been exposing financial corruption in Iran since the 1990s, Soltani says that corrupt individuals have never left the system even after their performance was exposed, and corruption is constantly on the rise. He added that the Iranian justice system discriminates in favor of corrupt individuals when they are close to the core of the regime, namely Khamenei's household.



Former mayor and current parliament speaker Ghalibaf (R) with Qasem Soleimani

He said: "Fighting corruption is part of the people's demands as the magnitude of government corruption is so high that the regime has no way but to try to control it through introducing reforms in the system." However, he acknowledged that most of the rhetoric about fighting government corruption is just a show, often with the intention of winning the people's attention at election times or to calm the situation when there are major protests.

Soltani pointed out that while corruption trials were held openly and the people could watch hearings on live TV in the 1990s, corruption cases are now shrouded in an aura of secrecy. Soltani reiterated that as long as talk about corruption is aimed at beatifying the political system or garnering support for a group of candidates, there will be no hope in controlling it.

Nonetheless, there seems to be some progress in the process. "When I disclosed the astronomical real estate case [in Tehran municipality] in 2016, I was jailed immediately, but five years later I was called for consultation for writing a new law to prevent that kind of

corruption as part of which the Municipality gave land and buildings to influential individuals to garner their support," Soltani recalled. He added that regardless of his help, the Iranian judiciary has been summoning him during the past 11 years to subtly warn him about his whistleblowing activity.

"They ask why me and not the intelligence agencies investigate a case. Well, the intelligence agencies did their own research but they got nowhere because there are flaws in the structure of the government," he said, adding that, "There are only four or five people who continue as whistleblowers, and all of them like me work single-handedly without any support from anyone in the system."

Referring to the problems in the system, he said the corruption case at the Petrochemical Complex (PCC) was a major case. But there were a few stage-managed court sessions and nothing more happened.

He was referring to a case of hundreds of millions of dollars embezzled by officials who were tasked to sell Iran's petrochemical products through obscure channels and return the money to the treasury during international sanctions in 2010–2013.

Soltani concluded: "There are so many inconclusive cases about financial corruption in Iran. In a corrupt structure you cannot claim to be dealing with corruption."

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### Disillusioned, jaded and cynical, says report

Marie-Danielle Smith

Canadian Press, 1 October 2022

FEDERAL WORKERS in Canada are increasingly cynical, skeptical and disillusioned about the idea of reporting wrongdoing in the public service, says a recent survey.

That pessimism is more "palpable and widespread" now than it was before the pandemic, and bureaucrats have become more likely to fear reprisals for whistleblowing.

Research firm Phoenix Strategic Perspectives Inc. delivered the report in March to the Office of the Public Sector



Integrity Commissioner, which investigates serious abuses within the federal government.

Commissioner Joe Friday says there is a maze of oversight mechanisms available to public servants and it can be discouraging or exhausting to figure out where to lodge a complaint.

He says he thinks public servants are feeling more isolated and disconnected during the pandemic, making it more difficult to feel confident in coming forward — let alone to gather the sort of documentation that whistleblowers require.

Chris Aylward, the president of the Public Service Alliance of Canada, says the protections in place for whistleblowers are inadequate and the regime must be strengthened.



Chris Aylward

“It’s discouraging to see that federal workers have grown more cynical about whistleblowing and reporting wrongdoing in the public service, but it is not surprising,” Aylward said in a statement.

“It can be intimidating to come forward as a whistleblower, and our members are right to fear retaliation. Strong measures are needed to protect workers that speak out. Instead, there are too many conditions on whistleblowers that unnecessarily restrict disclosure.”

The report, based on nine focus group sessions held in March, found that workers feared a wide variety of hypothetical repercussions, many of which are premised on the fear that confidentiality could be compromised.

These included a negative impact on the physical or psychological well-being of the whistleblower, a lack of support, the idea that they would acquire a reputation as a troublemaker, diminished trust and division among co-workers and “damage to the image or reputation of the public service.”

Some said they feared their careers would be derailed — that they’d be

given poor evaluations, be taken off projects, be assigned less challenging work or have their workloads increased.

Compared to a similar report undertaken in 2015, public servants were more likely to say that their attitudes toward whistleblowing had changed over time. This time around, they described themselves as having become “less naive,” “more pessimistic,” “more cynical,” “more jaded,” “less bright-eyed” and “more disillusioned.”

Workers tended to see whistleblowing as a good thing and described whistleblowers as brave people who should be encouraged and supported. But they emphasized that prospective whistleblowers “need to understand what they are facing”: a process that is “long, arduous, stressful and uncertain as to the outcome.”

And while participants reported an increase in awareness and education about the process of reporting wrongdoing, they didn’t trust it.

“Many held the view that such changes amount to ‘virtue signalling’ or ‘window dressing’ as opposed to constituting real cultural change,” the report says.

A little over half of the focus group attendees were unaware of the existence of the office that commissioned the research in the first place.

That’s not necessarily such a bad thing, Friday says.

“I think if every public servant woke up every morning and first thing on their mind was, ‘How do I bring wrongdoing to light,’ that might suggest that there’s more wrongdoing than anybody thinks there is,” he says.

Still, it’s apparent that many don’t know how the whistleblowing process works, or don’t have trust in it if they do. “Clearly, there’s more to do,” he says.

It can be frustrating to push for cultural change on the margins of a 300,000-person organization, Friday says — and with no influence or authority over the internal, department-specific procedures that govern most of the whistleblowing system.

Still, his office of 35 people has reached thousands of public servants with events and presentations over the course of the pandemic, he says, in an attempt to demystify the process.

In the seven years he’s been commissioner — and during his time as deputy

commissioner and legal counsel before that — Friday says he’s never given a presentation that didn’t result in a followup with someone in the audience who was considering reporting wrongdoing.

“We’re talking about something very personal, very often something that someone has not yet spoken to anybody about,” he says, lamenting that the pandemic has resulted in fewer opportunities to have face-to-face conversations.

“We’re trying our damndest to continue with our outreach efforts.”

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## Theo Nyreröd — busting the myths of whistleblower rewards

Mark Worth

*Whistleblower Network News*

8 November 2022

THEO NYRERÖD doesn’t buy into the stereotype that the only good whistleblower is a martyred whistleblower.

The time has come, he says, to dispense with the age-old notion of a morally perfect person who is willing to sacrifice everything — their job, their financial future and their family’s well-being — in order to expose a hidden crime. A penniless whistleblower is not a success story.

“There is a perception that people should have to suffer in order to be a whistleblower,” says Nyreröd, a doctoral researcher in law at Brunel University in London. “The truth is that most people wouldn’t risk their well-paying job at the bank or at the company where they work. They don’t want to throw their career away.”

Acting selflessly for the benefit of society is among the most admirable things a person can do. But if we expect a person to lose everything in the process, says Nyreröd, this is a price that is too high for almost anyone to pay.

Nyreröd’s solution? He is one of the growing number of researchers studying how monetary rewards can incentive vulnerable witnesses to come forward, and compensate them for career damage that in many industries is virtually automatic.

“Paying people for information is a no-brainer. Otherwise, witnesses who

are at risk of retaliation are forced to remain silent,” said Nyreröd, who has published many journal articles and policy papers on whistleblower protection and reward programs. “Many people need something more than just the personal satisfaction of doing the right thing. They need an incentive.”



Theo Nyreröd

Regulators and law enforcement also need all the help they can get, Nyreröd says, particularly when it comes to detecting and prosecuting white-collar crime. Any reasonable tool to fight corruption should be considered. “We have to shake things up,” he said.

Overcoming societal opposition to paying whistleblowers — “We don’t pay snitches” — is difficult. In a paper he co-authored, Nyreröd explains that Europe’s opposition to rewards is linked to “path dependence” — what he calls “the persistent effects of its history on legal and social culture and traditions.” He cites Nazi Germany and Soviet Russia dictatorships that “relied heavily on citizens reporting on one another.” This may explain why most Europeans “view mechanisms that incentivize reporting with suspicion.”

#### “Eyes and ears”

The idea of whistleblower rewards is as old as democracy itself. The concept goes back at least to ancient Rome, which had a type of “private law enforcement” that paid witnesses a percentage of recovered funds. “This system is very old,” Nyreröd said.

It’s also been dated to 7th century England. Later, following The Plague in the 14th century, British citizens were rewarded for reporting violations of a regulation that banned people from being paid more than what they earned before the outbreak. “Eventually re-

wards were used for many things in England. They applied to a broad swath of the population,” he said.

Reporting all manner of crimes in England could fetch a reward, including customs violations, illegal alcohol sales and breaking such laws as the White Herring Fisheries Act of 1771. “Citizens were the eyes and ears,” said Nyreröd. “It was almost like a profession, especially in communities that didn’t have a police department.”

The system was abolished in 1951 by the so-called Common Informers Act. But the UK has since brought back whistleblower rewards. The Revenue and Customs agency pays people based on the value of the evidence they provide: the amount of taxes recovered, the value of loss prevented, and time saved to investigate cases.

Today, at least 16 countries in Europe, the Americas, Africa and Asia have some sort of reward program in place. The US has by far the most reward laws and programs, including the Foreign Corrupt Practice Act, False Claims Act, Dodd-Frank Act, and the Commodity Exchange Act.



#### The economic value of information

In researching his Ph.D. thesis on the design and performance of whistleblower laws, Nyreröd has explored many arguments in favor of rewards.

On top of the obvious benefit of compensating people who are punished for no fault of their own, rewards have a strong symbolic value. Nyreröd makes the philosophical point that rewards “can turn capitalism on its head, by turning the toxic part of capitalism against itself.”

Related to this, Nyreröd said crooked politicians and company executives tend to project their own financial motivations onto the people around them. Rewards thus can serve as a deterrent. “They think a whistleblower also might be after an economic benefit.

If a whistleblower has a financial motivation, this can represent a threat in the mind of the crook,” he said.

This economic benefit, he said, should be based on the scale of the crime itself. Typical whistleblower protection laws treat everyone the same: a person doesn’t get “more” protection if he or she reveals a huge corruption case. Rewards can add proportionality: the larger the fines that violators have to pay, the larger the reward the whistleblower receives. “Information has an economic value,” says Nyreröd. “The reward should be based on the seriousness of the crime.”

Nyreröd points out a key discrepancy between white-collar corruption, which often gets little attention, and violent crime, which is high-profile and shocking. For centuries, police have dangled rewards as an incentive for citizens to turn in murderers, robbers and drug dealers. There is no controversy here. “The damage is obvious. We can see it,” he says.

On the other hand, because financial crimes are more subtle, the public typically doesn’t respond as viscerally. “These are ‘boring’ crimes that we don’t really get engaged with. The consequences are not as obvious.” Therefore, Nyreröd said, the idea of paying rewards is less convincing. “The reality is that the damage caused by white-collar crimes can be much more serious than we think.” Paying rewards to corruption whistleblowers, he said, can help expose the real harm caused by white-collar criminals.

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## Organizational dynamics influence whether workers blow the whistle

Carnegie Mellon University  
News release, 3 November 2022

WRONGDOING is endemic to organizations, costing U.S. firms billions of dollars in fraud. The primary way wrongdoing is caught is through whistleblowers, who have long been thought to act out of a desire to help or improve their organization.

A new study considered a different angle, looking at individuals as members of organizations as well as members of social groups to understand how group affiliations affect the likeli-



hood of whistleblowing. The study found that group cohesion reduced individuals' tendencies to blow the whistle on wrongdoers inside their group but increased their tendency to do the same on wrongdoers outside of their group.



The study, by researchers at Carnegie Mellon University (CMU) and the University of California, Irvine (UCI), is titled “Whistleblowing and group affiliation: the role of group cohesion and the locus of the wrongdoer in reporting decisions” and published in the journal *Organization Science*.

“Understanding the effects of group dynamics on whistleblowing can inform organizational interventions to detect and prevent wrongdoing,” explains Brandy Aven, Associate Professor of Organizational Theory, Strategy, and Entrepreneurship at CMU’s Tepper School of Business, who co-authored the study. “By understanding how individuals identify and associate with each other, we can determine the impact of social structure on responses to wrongdoing.”

Seeing whistleblowers as individuals who act for the organization’s benefit neglects the fact that these individuals are not only members of the organization but also members of internal social groups that may form along various dimensions (e.g., work groups, demographics, rank, geography, hobbies). These social groups affect individuals’ behavior and decision-making.

In this study, researchers used data from the 2010 Merit Principles Survey, which asked federal employees in two dozen U.S. departments and agencies about observed and hypothetical wrongdoing; the study’s sample included nearly 3,000 federal employees with knowledge of wrongdoing by another government employee who either blew the whistle or did not report the wrongdoing. The researchers also conducted a vignette experiment using a separate sample of nearly 300 online respondents in the United States.

The study found that when a wrongdoer was affiliated with a potential whistleblower’s group, higher group cohesion decreased the likelihood of blowing the whistle, due to the potential whistleblower’s greater loyalties to group members and a desire to protect the reputation of the group. When a wrongdoer was not affiliated with a potential whistleblower’s group, higher group cohesion increased the likelihood of blowing the whistle because potential whistleblowers felt they had the support of fellow group members, lessening fears of retaliation.

The authors note that their study features several limitations. While research has shown that individuals’ morality and perceptions of wrongdoing can be influenced by social dynamics and group membership, this study did not assess whether individuals interpret differently what behaviors constitute wrongdoing. The study also did not address issues related to overlapping group memberships and to differences in voluntary versus mandatory groups. Finally, the study did not distinguish which acts of wrongdoing harmed victims (e.g., harassment, discrimination) and which harmed just the organization.



Contrary to prevailing views of whistleblowing, the study’s findings suggest that individuals are strongly influenced by group dynamics within the organization, perhaps more so than by concerns about the organization itself. Thus, while group cohesion may lead to whistleblowing in one part of the organization (i.e., outside the group), it can lead employees to shield wrongdoers in another part of the organization (i.e., inside of the group).

“By showing how group affiliations inform whistleblowing decisions, we reveal how variation in social structure leads to heterogeneity in responses to wrongdoing,” says Patrick Bergemann, Assistant Professor of Organization and

Management at the Paul Merage School of Business at UCI, who led the study. “As such, we encourage organizations to look at more than organizational-level factors and consider a new focus on relational dynamics.”

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## Government credibility on the line amid Boyle and McBride trials

Rex Patrick  
Michael West Media  
22 November 2022

RELENTLESS PROSECUTION of whistleblowers David McBride and Richard Boyle may damage the credibility of Australia’s government on the world stage. Whistleblower protection laws need urgent reform.

“We are committed to ensuring that Australia has effective protections for whistleblowers”, the Attorney-General Mark Dreyfus KC proclaimed at an Australian Public Sector Anti-Corruption Conference in Sydney a week ago. With the skill of a seasoned politician, he did so with a straight face.

Dreyfus pledged his support for the protections knowing full well that the prosecutions of whistleblowers Richard Boyle and David McBride, by the organisations they blew the whistle on, continue relentlessly.

Boyle is in the courts facing criminal charges related to his disclosure of Tax Office abuse of garnishee powers. Enduring garnishee notices issued by ATO allow the Tax Commissioner to unilaterally and completely strip the bank accounts of businesses, leaving them unable to pay employee wages, superannuation, or supplier. It’s a death warrant.

After Boyle blew the whistle through the ABC’s 4 Corners, the Inspector-General of Taxation (IGT) conducted a review into the ATO’s use of garnishee notices and found anomalies in the ATO’s Adelaide office, where Boyle had worked. The irony in the review is, after a botched investigation by the ATO into his initial public interest disclosure, Boyle went to the IGT — who did nothing.

McBride is also in the courts facing criminal charges for blowing the whistle on war crimes committed by a small group of Australian troops in

Afghanistan. Although what he alleged was occurring would be embarrassing to the Army's higher command, it's not as though he was making things up. Since he blew the whistle the Brereton Review found of operations in Afghanistan:

There is credible information of 23 incidents in which one or more non-combatants or persons hors-de-combat were unlawfully killed by or at the direction of members of the Special Operations Task Group in circumstances which, if accepted by a jury, would be the war crime of murder, and a further two incidents in which a non-combatant or person hors-de-combat was mistreated in circumstances which, if so accepted, would be the war crime of cruel treatment.



David McBride

Last month, at the start of what was to be a four-day hearing of McBride's whistleblowing defence, the government sprung a public interest immunity (PII) claim over parts of McBride's evidence. The PII claim was made on national security grounds and has made it impossible for McBride to effectively argue his whistleblowing defence.

That's right, the same government that expects us to believe the Government is committed to ensuring that Australia has effective protections for whistleblowers has emplaced an impenetrable barrier in the way of McBride's whistleblower defence.

Meanwhile, no Australian soldier has yet been prosecuted for war crimes in Afghanistan. Only the whistleblower has been targeted.

Attorney-General Mark Dreyfus could, at the stroke of a pen, end the persecution of Boyle and McBride. Section 71 of the Judiciary Act grants him a power to decline to proceed further in indictable prosecutions. The power is provided to ensure the Attorney-General can discharge his

ultimate responsibility to Parliament and to the people for the conduct of the prosecution process.



Richard Boyle

Dreyfus used this power in relation to whistleblower Bernard Collaery, who blew the whistle on the Howard Government's defrauding of Timor-Leste of its oil and gas resources — through spying on Timor's sea boundary negotiating team in 2004. No-one should mistake the use of his powers to stop Collaery's prosecution as an act to protect a whistleblower, rather it was used because a failure to do so would have significantly complicated Australia's ongoing relationship with Timor-Leste.

Earlier this month the International Whistleblower Network, a coalition of national and international whistleblower protection experts, wrote to Mr Dreyfus. In comparing Boyle and McBride to Collaery's case, they stated:

The cases of whistleblowers Mr Boyle and Mr McBride are equally exceptional and important. ... Despite raising matters of serious public concern — since vindicated by independent investigations — these prosecutions have continued. Urgent intervention is needed to address the injustice caused by these criminal prosecutions, to minimise the chilling effect of these cases and to fix Australia's whistleblowing law to ensure such cases can never happen again.

They went on to warn:

Around the world, we once looked to Australia as a beacon in protecting and empowering public interest whistleblowers. If Australia pro-

ceeds to prosecute and imprison public officials who speak up about government wrongdoing, it will lose credibility on the world stage when it comes to transparency and accountability.

Reform is essential.

Mr Dreyfus has foreshadowed the introduction of a new Bill to offer greater protection to whistleblowers. But will those protections be enough?

In what can only be described as a well-timed release, the Centre for Governance and Public Policy at Griffith University, the Human Rights Law Centre and Transparency International Australia have unveiled a Federal Roadmap for Protecting Australia's Whistleblowers.

The report is short, but informative and punchy. It will serve as a baseline against which politicians, the media and the public can judge the legislation that Dreyfus is about to table. Key recommendations include:

- the establishment of a Whistleblower Protection Authority to guide and support people through the whistleblowing process,
- better training for government officials,
- consistency for all whistleblowers, whether they work in the private or public sector,
- ensuring whistleblower protection exists against all but 'self-standing', entirely unrelated offences,
- enforcing a positive duty to protect whistleblowers,
- simplifying and upgrading proof requirements of remedies to detriment.

Let's just hope Dreyfus reads the report and takes heed of its recommendations.

As he rises to the table of the House of Representative to introduce new legislation and describe the road looking forward, the Attorney-General might want to stop the bus and deal with the carnage in the rear-view mirror caused by his own flawed 2013 Bill and a lack of attendance to grossly improper prosecutions that are still happening.

The Attorney-General's credibility, and that of the Government, is at stake here.

Rex Patrick is a former Senator for South Australia.



## Whistleblower reform too late for McBride, Boyle

Paul Gregoire  
*Sydney Criminal Lawyers*  
14 December 2022

“REFORMS to the Public Interest Disclosure Act are long overdue and significant reform is required to restore the Act to a scheme that provides strong protection for public sector whistleblowers,” said attorney general Mark Dreyfus in a statement as he was about to table amendments to it.

Introduced on 30 November, the Public Interest Disclosure Amendment (Review) Bill 2022 amends the Public Interest Disclosure Act 2013 (Cth) (PID Act), which is a piece of legislation drafted by Dreyfus the first time he held the position of chief lawmaker back in 2013.

The bill delivers on 21 of the 33 recommendations made by the Moss review of the PID Act in a 2016 report. The Turnbull government ignored the inquiry findings, while the Morrison government responded to the report in late 2020, accepting 30 recommendations but acting upon none.

Dreyfus made it known long before the May federal election that he’d be cleaning up the Act if in office, stating that he knew it was lacking when he oversaw its enactment, which was a welcome assertion, especially amongst supporters of three high profile whistleblowers then being prosecuted.

And on being reinstated as AG, Dreyfus inherited these prosecutions, which involved Bernard Collaery, David McBride and Richard Boyle. And although he dropped the Collaery case, which didn’t trigger the Act, McBride and Boyle were forced to argue their defences under the dodgy laws.

### After the fact

The Moss inquiry found a number of areas in which the PID Act is lacking. The main issues with it are that the path a whistleblower must take is too convoluted, and that they’re not properly protected when taking it, while as was the case with Collaery, intelligence leaks aren’t covered.

In his second reading speech on his amendment bill, the AG outlined that it aims to strengthen protections for

disclosures and witnesses, including against reprisals. And he added that these are the first amendments to be made ahead of a greater overhaul next year.

The amendment bill has since been sent for Senate committee review, so that it might be passed prior to establishing the National Anti-Corruption Commission mid-next year. Although Dreyfus has complained that in pushing back the reporting date by one week, the Greens have jeopardised this.

### Too late for some

Dreyfus dropped the whistleblower case against ACT barrister Bernard Collaery at a point in the case when the whistleblower looked set to have a lot of the secrecy measures imposed on his prosecution lifted.

The AG brought a halt to the case using the power he has under section 71 of the Judiciary Act 1903 (Cth). However, he’s declined to do the same in regard to Boyle and McBride, telling the Alliance Against Political Prosecutions that their cases don’t warrant intervention.

So, ATO whistleblower Richard Boyle, who’s facing 24 charges over having exposed an illegal and since reformed tax office practice, was made to argue his public interest disclosure defence under the flawed laws in October. The South Australian man is now awaiting the outcome.

While ADF whistleblower David McBride was blocked from arguing his defence under the faulty laws, as, even though the ex-military lawyer’s case is shrouded in secrecy, the prosecution moved to block his witnesses and remove some of his evidence, making it impossible to mount his defence.



David McBride speaks at a rally calling for Julian Assange to be brought back to Australia

McBride is now facing charges that could see him spend the rest of his life behind bars: a similar fate that awaits

Boyle if his PID defence is unsuccessful.

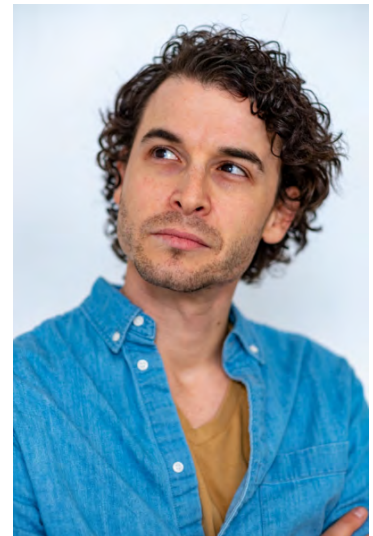
So, as the attorney general is redrafting the PID Act for its major overhaul to ensure it covers future public sector whistleblowers next year, McBride and possibly Boyle are likely to be standing trial on criminal charges as the laws that failed to protect them are corrected.

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## The age of the work-from-home whistleblower

Britta Lokting  
*Business Insider*, 20 December 2022

WHEN Simon Edelman blew the whistle on his former employer, the US Department of Energy, he couldn’t have known that his act of defiance was at the forefront of a growing national trend.



Simon Edelman

In 2017, Edelman was a photographer for the DOE. As the department was moving forward with a series of new rules that would have boosted the coal industry, he decided to anonymously leak photographs to the progressive news site *In These Times* of a meeting between the Energy Secretary Rick Perry and the CEO of one of the country’s largest coal companies. The photos showed the executive presenting DOE officials with a pro-coal regulatory plan and giving Perry, a former governor of Texas, a hug. The day after the photos were published, Edelman was escorted out of the DOE offices, prohibited from taking his personal laptop, and, he says, had his photo equipment taken away.

The department fired Edelman, despite, he says, never investigating or confirming that he was the whistleblower. (Edelman took the photos, but they were uploaded on a shared drive that other employees had access to.) Edelman eventually did come forward publicly in a *New York Times* article in January 2018 and admitted to leaking the photos, saying he wanted to “expose the close relationship between the two men.” He also filed a complaint with the department, claiming whistleblower status, a formal designation that protects people who report ethical or legal violations, fraud, abuse, or other wrongdoing inside companies and government agencies from retaliation. Edelman said the department ultimately came up with a settlement that both parties agreed upon.

But after a whirlwind news cycle about his case, Edelman experienced the silent retaliation that dogs many whistleblowers: He couldn’t find a job. “They happened to Google my name,” he told me of his various interviewers, “and I didn’t get a response back.”

Edelman’s experience as a whistleblower, both the highs and lows, are becoming more common. A series of high-profile whistleblowers have come forward over the past few years: Tyler Shultz and Erika Cheung at Theranos, Frances Haugen at Facebook, Mark MacGann at Uber, and Peiter “Mudge” Zatko at Twitter. And it’s not just at big tech companies. The Securities and Exchange Commission — which implemented a whistleblower program in 2011 and where Haugen and others have sent documents — has received a historic jump in complaints over the past few years. In fiscal year 2021, the SEC said it received 12,210 tips, a 76% increase from the year prior and a 300% growth rate since the start of the program. The program broke the record again this fiscal year with over 12,300 tips — a 136% increase from 2019. (For comparison, in fiscal year 2012, the first year the program has data for, it received just 3,000 tips.)

And this surge may not be a coincidence: The extra time and space workers gained from the pandemic and the rise of remote work have caused an environment favorable to whistleblowers, helping to ignite an explosion in complaints.

## How remote work sparked a flood of whistleblowers

As the pandemic spread and workers retreated to their makeshift home offices, employees began to reconsider their relationship with work. The space between employer and employee helped many people come to terms with the malfeasance happening at their companies and, eventually, report it. MacGann, the Uber whistleblower, told *Politico* that it wasn’t until the pandemic that he “had time on his hands” to really ponder his decision to come forward about the ride-hailing company’s treatment of workers.



Mark MacGann

Mary Inman, a partner at Constantine Cannon who has been representing whistleblowers for 25 years, told me that virtual work has likely encouraged whistleblowing, because employees haven’t developed the same loyalty to their employers as they would in person. “The risks seem farther off when you’re in a remote environment,” she said. And as workers around the country have reconsidered their jobs and quit in droves, allegiances have shifted. “All that navel-gazing led to people being more willing to undertake the risk that is inherent in blowing the whistle,” said Inman.

Joohn Choe worked as a contract disinformation and extremism researcher for Facebook following the Capitol riots on January 6, 2021. While working from home, he discovered that the company was allowing people sanctioned by the US government to continue using the platform even after he raised concerns internally. He eventually grew tired of the company dragging its feet and filed a complaint

with the Treasury Department and the Department of Justice. In his complaint, Choe alleged Meta was knowingly violating US sanction laws by not removing the accounts of the sanctioned individuals. While the work-from-home setup was not new for Choe, he understands that the remote environment can “reset your standards about what forms of exploitation you’re willing to accept.”



Joohn Choe

“Without those conformity signals of going to the office and having someone look over your shoulder, it ends up being, ‘What am I getting out of this job? What is this work doing to me?’” he told me. “And these are questions that are much easier to ask when you’re in the stillness of your own home, in the environment of your own mind.”

Libby Liu, the CEO of Whistleblower Aid, echoed this idea. Tech companies, she said, often try to foster a familial culture of “groupthink” where the work transcends the individual. This, in turn, creates a situation of social intimidation and peer pressure where employees who go out and “share a secret” are characterized as disloyal or a snitch. Remote work, she explained, helps to remove some of those barriers to whistleblowing.

“If you’re in an office all day, every day with everybody else and people who are making the Kool-Aid, drinking the Kool-Aid, buying the Kool-Aid — I think it makes it so much more difficult,” she told me.

Teresa Ross first raised concerns about her employer, Group Health Cooperative, back in 2011. When she told her superiors that she believed the company was submitting false insurance claims for Medicare reimburse-



ment, therefore defrauding the government, she was dismissed by leadership and told she wasn't a team player. As a manager, she was also told not to disclose her concerns to her subordinates. When the company eventually brought in a psychologist to meet with her, she told me that "they made me start to question my own sanity." Then, in 2012, she met Inman, the lawyer at Constantine Cannon, and filed a complaint under the False Claims Act alleging Medicare fraud. The case was under seal for eight years, meaning Ross couldn't tell anyone about her case. The government ended up settling for over \$6 million.

Whistleblower cases are increasingly ending up like Ross' — with real action and compensation for the tipsters. In addition to the record-breaking number of tips, the SEC whistleblowing program awarded \$229 million in 103 cases this year. In fiscal year 2021, that dollar amount was almost double at \$564 million, more than the entire amount awarded from 2011 to 2020. According to the agency, these are awards for "providing information that led to the success of SEC and other agencies' enforcement actions." Since the program began in 2011, it has paid out more than \$1.3 billion.

### A surge of COVID whistleblowers

It's perhaps not surprising that the pandemic helped trigger a whistleblowing boom. In many ways, the public's awareness of COVID-19 was kicked off by a whistleblower: Li Wenliang. An ophthalmologist in Wuhan, China, Li warned colleagues about the virus in December 2019 before being detained by Chinese security forces and accused of "making false comments," spreading rumors, and disturbing "the social order." He died of COVID in February 2020.

In the US, whistleblowing complaints around worker safety increased exponentially during the early days of the pandemic. The US Department of Labor found that the number of complaints filed to the Occupational Safety and Health Administration's whistleblower program rose by 30% between February and May 2020.

One such whistleblower was Dawn Wooten. Two years ago, she didn't even know what a whistleblower was. But she did know what she saw and

heard while working as a nurse at the Irwin County Detention Center in Georgia. The center is operated by LaSalle Corrections, a private corporation, and Wooten says that during the height of COVID, she observed cases going unreported to the health department, medical documents being shredded, and masks not being issued to detainees. She started raising concerns internally but said her supervisor turned her away and told her, "Get the hell out of my office."



Dawn Wooten

After being demoted, she found Project South and the Government complaints to the Department of Homeland Security's Office of Inspector General on her behalf. According to the complaint Project South filed, Wooten also alleged that the facility flouted quarantine guidelines, that the warden allowed individuals who had COVID to be transferred to the facility, and that detainees who complained of symptoms were not tested. "I didn't want to be a part of people being treated like animals," she told me. Like Edelman, since she started speaking out in the summer of 2020, Wooten has had difficulty finding long-term work.

### Companies cracking down

This growing willingness on the part of everyday people to speak up about wrongdoing at their companies has left many businesses in a precarious position. Ideally, this would lead to a corporate culture shift where employees are able to raise concerns internally without any backlash or fear. But we live in a far from ideal world and experts say the rise in whistleblowing

may only cause executives and managers to surveil their workers more.

Kate Kenny, a professor at the University of Galway and a researcher for Whistleblowing Impact, told me that while there is "more consciousness around whistleblowing," the use of "silencing mechanisms" such as keyboard tracking, nondisclosure agreements, and lawsuits against whistleblowers are on the rise. And some companies are going to extremes to monitor remote employees: The use of facial recognition and other monitoring technologies has doubled in the past year, according to a *Washington Post* report.

In the past decade, more protections and laws have been established to protect and encourage whistleblowers, such as the just-launched Integrity Sanctuary which offers a safe haven in Canada for international whistleblowers. There is also technology like Vault Platform that includes software for whistleblowers to report anonymously. As someone who has worked with whistleblowers for over two decades, Inman believes that the culture shift brought on by the pandemic and remote work could lead to more permanent change. She sees whistleblowers as a necessity — and the reason that companies are now in a vulnerable position.

"You cannot replace the power of a whistleblower insider in helping law enforcement to root out fraud," Inman said.



Mary Inman

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## Whistleblowers Australia contacts

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## README.txt

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If you're a fan of autobiographies, get a copy of Chelsea Manning's, titled *README.txt*. Manning is one of the world's most famous whistleblowers. Working for the US military in Iraq, she leaked vast quantities of data to WikiLeaks.

If you want to learn in-depth about these disclosures, you'll have to look elsewhere. *README.txt* is a personal memoir, moving and at times excruciating. We read about Manning's difficult childhood, including gender dysphoria from an early age. Then there was her search for a role in life, homelessness, disorientation and joining the US army. That turned out to be another form of hell, for a variety of reasons.

Manning had exceptional computing skills and the army had lax data security. Manning saw the striking discrepancy between the reality of the war in Iraq and the cosy picture presented by the US mass media, and wanted to do something about it. It was a turbulent time for her emotionally. After unwisely revealing what she'd done, she was arrested and held in a cage in the desert for two months. The torture continued after removal to a US prison. Manning tells of the deterioration of her mental state during these periods.

This is less a triumphant story of whistleblowing than a revealing account of a difficult life and the dysfunctional surrounding society. It is engaging and amazing. We are lucky to be able to read it. — *Brian Martin*

## Whistleblowers Australia membership

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

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

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

Renewing members can make your payment in one of these ways.

1. Pay Whistleblowers Australia Inc by online deposit to NAB Coolumb Beach BSB 084 620 Account Number 69841 4626. Use your surname/membership as the reference.
2. Post a cheque made out to Whistleblowers Australia Inc with your name to the Secretary, WBA, PO Box 458 Sydney Markets, Sydney, NSW 2129
3. Pay by credit card using PayPal to account name [wba@whistleblowers.org.au](mailto:wba@whistleblowers.org.au). Use your surname/membership as the reference.

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