"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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Twenty-five years on …

Kim Sawyer

IN OCTOBER it is twenty-five years since I blew the whistle. Like every whistleblower I remember the day I blew the whistle; but no one else would. Whistleblowing is a very singular experience. Over twenty-five years I've learnt a lot about whistleblowing. I want to share some of those observations.

Whistleblowers are independent regulators. The 1994 Australian Senate Committee report on Public Interest Whistleblowing (1994, p.100) summarized who we are:

> Whistleblowers, although generally supportive of a new agency, were particularly sceptical in their comments by emphasising the need for independence.

We are independent and we are competitors. We often compete with the regulators mandated to regulate. The network of regulators is like all networks; they minimize risk but usually the risk to the institutions they regulate. The regulators' view of risk is different from ours. We focus on the long-term; they focus on the short-term. I remember a discussion with a senior bureaucrat in the 1990s who posited that the regulator did not want to open up a university to scrutiny because they viewed it as hermetically sealed. Universities are hermetically sealed, more so now than in 1992. In the twenty-five years since I blew the whistle, universities have become more corporate, more dependent on private funds, but less accountable for the disbursement of funds. No Vice-Chancellor has to justify their million-dollar salary to the stakeholders. Our institutions and not just our universities have become corporations without requisite accountability. Our institutions self-regulate and regulators defer to that self-regulation. Whistleblowers lift the lid on the seal.

Whistleblowers blow the whistle on more than infractions; they blow the whistle on culture. When I first blew the whistle, it was about a culture of unfairness that had taken hold in the department.

Unsurprisingly I was supported by three quarters of the department; unsurprisingly I was not supported by the university administration. The administration had become that culture. When the department's newly acquired shredder began to shred all the department's financial documents it was a signal that something wasn't quite right. But the regulator was not interested. They said they could get all they needed from the spreadsheets. But they could not. Whistleblowers provide information that is not in spreadsheets. Regulators do not see what whistleblowers see. That's why insiders are important.

In 1994 after the report of the Senate Committee on Public Interest Whistleblowing, I had high hopes for whistleblowing legislation. The Committee made 39 recommendations including the establishment of a Public Interest Disclosure Agency (PIDA) separate from other agencies. Their recommendations are still a benchmark. A separate agency would be a clearinghouse for public interest disclosures. Whistleblowers could make disclosures to different regulators, but the PIDA would be the clearinghouse which managed whistleblower protection. The 1994 Committee recommended a Board comprising community representatives to oversee the PIDA, but it was never established. Regulatory oversight is one of our great problems; *Who regulates the regulators* has never been addressed.

My thoughts on legislation have changed since 1994. I no longer see legislation as the panacea for a number of reasons. Legislation is designed to deal with the manageable, not the systemic, and the systemic problems matter most. To be sure the Public Interest Disclosure Act of 2014 is better than no Act, but the Act does not seem to punish repeat offenders. Repeat offending is an indicator of an institutional problem. Without whistleblowers, the New South Wales Police, Victorian Police and State Rail Authority of New South Wales could never have been cleaned up. Whistleblowers provide a signal for regulators to clean up institutions. Whistleblowing is the first step, but there is a second step.

Legislation has failed to look at regulatory oversight. There needs to be better regulatory standards and accountability. The Senate inquiries of the 1990s showed the principal problem for whistleblowers was regulators not doing what we expect them to do and not being accountable. Has anything changed? To be sure regulators are now more responsive and whistleblowers can take a lot of credit for that. But regulators have a long way to go. ASIC continues to say that the Australian corporate culture needs to change but what has ASIC done to change it? Where are the prosecutions for retaliation against whistleblowers? And in its 2016 submission to the Senate Inquiry for the Establishment of a National Integrity Commission, the Federal Attorney-General Department stated:

> The Australian Government is committed to stamping out corruption in all its forms. The Government does not support the establishment of a National Integrity Commission.

According to a recent poll commissioned by the Australia Institute, eighty percent of Australians support the establishment of a federal anti-corruption agency; so why not the Federal Attorney-General Department? There appears to be too much monopoly power to let go. Regulators should be accountable and not just to the politicians who defer to them. A National Integrity Commission is needed if only to make Federal politicians as account-

able as their state peers. And consistent with the recommendations of the 1994 Senate Committee, a National Whistleblowing Advisory Board should be established. But it's unlikely to happen soon.

Existing legislation has failed to understand the risks of whistleblowing, perhaps because legislators have never really listened to whistleblowers. They have read our submissions and heard our testimony, but they have never really listened. Since 1996 I have advocated for an Australian False Claims Act (FCA) which compensates whistleblowers for the risks they take. There has been a lot of resistance to a FCA. When I wrote an article in 2003 in *The Age* on a FCA, they editorialized two days later with *Protect, Not Pay, Whistleblowers*. When I proposed a FCA to Mark Dreyfus in 2008 he said it was too early for Australia. When I was approached in 2012 by the Building Education Revolution (BER) inquiry as to the possibility of an FCA, I recommended an FCA but the recommendation was ignored. The history of the US FCA has shown the importance of compensating whistleblowers; pre-1986 the compensation was too low with only a handful of cases; it all changed after 1986 when compensation was increased. Perforce monetary incentives are not always appropriate and professional and social responsibilities are still paramount. But the US FCA has shown just how effective whistleblowing can be.

The main problem with legislation is culture. In 2004 I wrote about this in the paper *Courage Without Mateship* where I spoke of the problem of networks and of individuals acting against networks. Whistleblowers cannot easily form networks of their own; we are too independent; we are reputed for what we disclose rather than who we connect with. Networks have become stronger in the last 25 years and corruption more dominant. Corruption has increased by an unknown magnitude since 1992; who knows for we can never measure it but the anecdotal evidence is strong. What can be asserted is that many transactions are now more doubtful, that outsourcing has implied greater mixing of public and private funds, and that money laundering is now a significant problem, as evidenced by the Commonwealth Bank case. Money may not be the root of all evil but it is the root of most of it. We have more anti-corruption agencies, more regulators, more ethics codes and more whistleblowers; but we have more corruption. The public interest is now harder to define and even harder to protect. Society has taught us to be too self-interested. In 1994 I argued for a Bill of Rights; now I would also argue for attendant responsibilities to be codified like the responsibility to report wrongdoing. Whistleblowing legislation is analogous to the Good Samaritan statutes enabled in the United States after the Kitty Genovese case. We need to reduce collective indifference.

Let me provide some insights as to the key players over the last 25 years. Australian politicians with few exceptions have failed whistleblowers. We haven't had a Charles Grassley, the US Senator who has advocated for whistleblowers for more than thirty years. We have had some support from crossbenchers, but never from a senior politician. My experience with Australian politicians was well summed up when I met a senior politician just before the 1996 election. He remarked "Whistleblowing, I thought we had fixed that." Australian politicians have been too focused on the short-term electoral cycle to champion the long-term benefits of whistleblowing. Twenty years without a Public Interest Disclosure Act attests to that. Whistleblowing has been an afterthought with too many recommendations remaining on the shelf. The 2001 Senate Committee Inquiry into Higher Education unanimously recommended the establishment of a Higher Education Ombudsman. It never happened; no politician or major party was sufficiently committed to it. And they have not been sufficiently committed to whistleblowing. Over twenty-five years I have seen a lot of window dressing, and the dressings have been replaced many times.

Journalists are other key players. Whistleblowers have a symbiotic relationship with them. We need the media as a last resort and they need us as a source. When we speak to them we establish a form of contract; we give them information and they give us coverage. But it is a very one-sided contract; the contract expires when we are no longer newsworthy. It would be nice to see a story in a newspaper with the title *Where Are They Now* about the whistleblower who underwrote the story of ten years ago. But it won't happen. In a recent discussion with an investigative journalist, he lamented the pressure of the cutbacks in the newsroom and the pressure of clickbait. Corruption stories have a shorter half-life than twenty-five years ago, and once the story disappears the whistleblower is on their own.

There are other players. A whistleblowing industry is emerging. I recently attended a symposium at a university law school on corporate tax and whistleblowing. There were many interested parties; lawyers, academics, management consultants, regulators. Conferences are being programmed with expert panels but, when someone asked why there were no whistleblowers on the panels, there was a muted response. It is a legitimate question that should be asked more often. Perhaps we are seen as too close to the problem … or perhaps we are not seen as credible. Whatever, but there is discrimination here, albeit more subtle than in the workplace.

Looking ahead, notwithstanding the problems of the past we have progressed quite a long way since 1992. There is a developing framework. There is a Public Interest Disclosure Act. There is momentum for a False Claims Act and for a National Integrity Commission. And there is widespread acceptance of the legitimacy of whistleblowing. However there are risks ahead. There is the risk the framework will be weakened by politicians just as

Donald Trump is trying to do with the Dodd-Frank Securities Act. There is the risk that whistleblower protection will be seen as over-regulation rather than competitive regulation. There is the risk of opportunism. Workplace grievances may be wrongly channelled through public disclosures and there may be opportunistic use of the False Claims Act. However, the existing evidence for such opportunistic behaviour is very weak. Another type of opportunistic behaviour should concern us more. If anti-corruption legislation is not uniformly strong across the country, there is a risk that behaviour will not be subject to uniform scrutiny. The recent case of the Victorian opposition leader dining with an organised crime figure almost certainly would have been referred to ICAC by the Electoral Commission if it had occurred in New South Wales. But in Victoria the politician himself referred it to the Victorian IBAC in the expectation that IBAC would clear him. IBAC has significantly lower powers than ICAC. Politicians know that. The opportunistic politician will use weak legislation to their advantage. The anti-corruption framework must be uniform across the country, and uniformly strong.

My final observation is that while whistleblowers are part of an anti-corruption framework, we must retain our independence. We may be inside the framework but we have to be outside it as well. Outsiders have the advantage of observing without fear and favour, as often talked about but seldom practised. Whistleblowing cannot be programmed and whistleblowers should not be programmed. Independence is our greatest asset.

Kim Sawyer is a long-time whistleblower advocate and an honorary fellow at the University of Melbourne.

National whistleblowers day, 30 July 2017

Cynthia Kardell

YOU MAY RECALL something of the Fitzgerald Inquiry and the Four Corners documentary "The Moonlight State," which went to air in May 1987 and ultimately brought down the government in Queensland. But few would have known the whistleblowers who made it possible, until they spoke publicly for the first time in another Four Corners documentary, "Breaking the Brotherhood," which went to air in June.

It is a gripping tale and would make a marvelous telemovie. There was undercover police officer, Jim Slade, whose report on drug trafficking was shelved at the highest level, the National Bureau of Criminal Intelligence officer Peter Vassallo, who got journalist Chris Masters involved after meeting Jim Slade at a policing conference, the police officers on the beat who wouldn't take a bribe, like whistleblower Col Dillon, how the Queensland police planned to frame journalist Chris Masters as a paedophile, and the undercover Australian Federal Police officer Dave Moore tasked with protecting Masters, whose life was under threat.

Chris Masters

Other information quickly followed on the ABC website about the "Bagman," the secret codes, and the payments to bent cops in a web of corruption.

Jack Herbert, the Bagman

It hardly seems adequate to thank Jim Slade, Peter Vassallo and Col Dillon after so many years, but they probably would not have survived to tell the tale had they been known in 1987. And of course, our thanks to journalist Chris Masters who kept them out of the fray to his great personal cost. But now that we can, we can honour them knowing that their legacy will live on as a testament to why whistleblowing works — because it works to keep our police and governments on track.

Thirty years on, there is another whistleblower or two I'd like to thank, but can't — but you know who you are — because on 24 July another Four Corners program went to air: "Pumped: Who is benefiting from the billions spent on the Murray-Darling?" The story has quickly gained momentum with a focus on the alleged billion-dollar theft of water by some irrigators in the Barwon-Darling, who are alleged to have tampered with their pump meters, to mask the amount of water they have drawn from the river. And the senior NSW bureaucrat, alleged to have refused to approve a major operation targeting non-compliant irrigators in the north of NSW, who was recorded offering information — in secret — to their lobbyists.

Opinions aired in the program swung wildly up and downstream. Everything from "They are profiteering" and "It's the biggest water grab in Australia's history" to a defensive "They bring a lot of business to town."

Federal minister for water Barnaby Joyce later confirmed his department wouldn't be investigating allegations of water theft. Three days later he was recorded in a public meeting in a pub in Shepparton, Victoria accusing the ABC of campaigning to take your water away from you, to shut your town down. The NSW government limited an independent inquiry to the investigation of non-compliance and the senior bureaucrat has apparently referred himself to the NSW corruption watchdog ICAC.

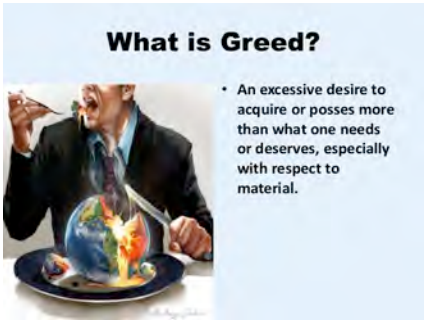
Online, reports are coming in thick and fast and some like the *Huffington Post* provide a useful synopsis — when the history is so important.

Four days out — on national radio — independent Senator Nick Xenophon reminded Barnaby Joyce, the Water Minister, that he shouldn't be trying to shoot the messenger!

So what have we learnt — 30 years on?

Whistleblowing works! However, whistleblowers still need to remain safely undercover and out of sight to be really effective. Whistleblower protection laws continue to allow the self-serving and the powerful to bury

wrongdoing, along with the whistleblower. The influential who abuse public trust are still more likely to escape liability than not. Demonising the whistleblower or the publisher remains a powerful weapon in the hands of those with skin in the game. An independently strong, public broadcaster can be relied upon to pursue the public's best interest without fear or favour. No surprises there. Rampant greed, opportunity, too little red tape and hustlers will hustle — with impunity.



We don't have another thirty years to waste: civil society like water is far too valuable. We need to tip the balance of power and opportunity in favour of the public's interest by setting up a strong, public agency — a Public Interest Disclosure Agency or PIDA — that exists only to protect, support and promote the public interest, in the hands of a whistleblower.

Whistleblowers, our supporters in the public interest everywhere – we salute you!

Cynthia Kardell is president of Whistleblowers Australia. For links to the sources mentioned, see the version of this article on the Facebook page of Whistleblowers Australia Inc posted 30 July 2017.

Federal report falls short

Cynthia Kardell

THE REPORT on whistleblower protections published in September by the federal Parliamentary Joint Committee on Corporations and Financial Services responds to two separate inquiries. The review of protections in the public sector in 2015 and the more recent inquiry last year into the possibility of private sector protections. We made submissions to both.

The first review was required by legislation, the Public Interest Disclosures Act 2014. The second is the result of a deal struck by government with cross bench senator Xenophon, which if honoured will see the government appoint an expert panel to consider the form it might take, which will obviously be at the mercy of political tensions in the lead up to the next election. Nothing new here, I hear you mutter.

You can read the report yourself. My plan here is to pick out some of the more significant developments as I see it.

Perhaps the most significant for me is the admission that "whistleblower protections remain largely theoretical with little practical effect in either the public or private sectors" due, in large part, to the "near impossibility" under current laws of protecting whistleblowers, holding those responsible for reprisals to account, effectively investigating alleged reprisals and whistleblowers being able to get someone to deal with it. I know we have been banging on about it for nearly a quarter of a century — but it is better late than never and it may, even bear fruit.

I think they have finally tumbled to the fact that the only way this is going to change, is if we have a separate whistleblower protection authority and by that I don't just mean keeping us whistleblowers safe and in our jobs. I suspect they realise that keeping us in our jobs, may well be the only way they can keep those pesky truths from getting out into the press. Like the bribery scandal involving the Reserve Bank subsidiary, fraud in the banking and financial services sectors, large scale rip-offs by upstream irrigators under the Murray Darling Basin plan and, just as you're thinking it can't get any worse, the alleged money laundering by our biggest bank.

All of these issues have been significant problems for governments that still prefer to control what we, the people know — rather than openly investigating and fixing the wrong and respecting, even rewarding whistleblowers. There is already a developing trend, where whistleblowers are quietly neutralised — redeployed, with an increase in pay — to manage and minimise the risk of litigation and public exposure. There seems to be a growing realisation among employers and legislators that neutralising whistleblowers in this way, is the price they will have to pay to control what's publicly known about the wrongdoing and their handling of it.

It has an upside. It will provide a public focus on whistleblowing, handle actions against those who take reprisals, facilitate compensation and many other things and that's all good.

Don't get me wrong. I do think that a whistleblower protection authority is a very good idea and long overdue. I'm just wary about it ending up as little more than a government enforcer when there is so much emphasis being put on crimping and trimming our power.

Those in power rarely cede power, which is why legislators are keen for us to believe that we must do as we are told, if we are to be safe. They don't want the law to openly respect a whistleblower's right to go to the media on his or her call when it is clear the employer is secretly organising to weasel out of its obligations. They don't want these ideas to get any traction, but I think it is too late, the genie is well and truly out of the bottle.

The lesson is we need to continue to go to the media as if of right and anonymously if we can, because eventually legislators will realise and accept that our right to safely ensure the public knows what they are up to, trumps any discretionary rights they might still retain.

In other words, find safe ways to assert the right, until it is written into law.

This report does concede much of what we have known to be true for a very, very long time, but that said, a lot of water still needs to go under the bridge and it might just take this report with it.

Media watch

Nigeria's whistleblower plan off to a great start

Yomi Kazeem
Quartz Africa, 13 February 2017

The real impact of corruption.
(Reuters/Afolabi Sotunde)

NIGERIA'S PROBLEMS with corruption are well-documented. In a bid to buck the trend, Nigeria's ministry of finance recently decided to try a new approach: allowing citizens who report corruption-related offenses earn a cut from the recovered loot.

The hope was that the whistle-blowing policy, put in place two months ago, would provide agencies like the Economic and Financial Crimes Commission (EFCC) with actionable tips to track and recover stolen government funds. So far, it appears to be working. Last week, EFCC retrieved $9.8 million from Andrew Yakubu, former group managing director of Nigeria's state oil company, thanks to whistle-blowing.


Cash recovered from Yakubu Andrew by EFCC. (EFCC/Facebook.)

Including Yakubu's loot, Lai Mohammed, Nigeria's minister of information, says the whistle-blowing policy has led to the recovery of over $180 million from various corrupt individuals.

To report corruption, whistle-blowers need to provide key information via a secure online portal. Offenses that can be reported include mismanagement of public funds and assets, violation of financial regulations, solicitation of bribes, and manipulating data and records. When tips lead to the successful recovery of ill-gotten funds, whistle-blowers are entitled to "between 2.5–5% of amount recovered." The ministry of finance also promises whistle-blowers that "confidentiality will be maintained to the fullest extent possible within the limitations of the law."

Whistleblowers should get compo

Adele Ferguson
Sydney Morning Herald
13 September 2017

Australia is a nation that turns sports players into national icons. We lionize them and treat them as heroes. But there is another type of hero, the whistleblower, who, until now has been smeared, abused and even sacked for exposing misconduct, fraud and corruption.

A joint parliamentary committee into whistleblowers has taken up their plight and in a much anticipated report tabled on Wednesday recommends whistleblowers be financially rewarded for their bravery in a system similar to the bounty system in the United States.

A deal struck could see whistle-blowers paid a "bounty" for exposing wrongdoing.

The inquiry also suggests setting up a Whistleblower Protection Authority for whistleblowers to take their allegations and have them investigated.

Most of all the recommendations are aimed at protecting whistleblowers from reprisals by amending the law. At the end of the day, it is now up to the government to fix the piecemeal system and create a better framework.

If the reward system and protections are implemented properly it will mean that whistleblowers won't have to make a choice between justice and financial security.

Many would-be whistleblowers stop short of blowing the whistle after seeing what happened to people such as Commonwealth Bank whistleblower Jeff Morris and Origin Energy whistleblower Sally McDow.

Besides destroying his career, he put his family through extraordinary stress and says he put his life in danger by upsetting one of the people he had dobbed in. Yet for the public, his whistleblowing helped spur reform in the financial planning industry and resulted in tens of millions of dollars paid in compensation to ripped off customers.

McDow, a highly credentialled lawyer and former senior compliance manager at Origin Energy, alleged significant and dangerous compliance breaches at its gas and oilfields, spills and explosions, a deliberate cover-up by management and potential breaches of the Corporations Act. Soon after using the company's internal whistleblower procedures, she lost her job.

She settled a case against Origin and recently set up CPR Partners, an advisory firm that provides guidance on culture, performance and reputation, including whistleblowing.


Sally McDow

The proposed changes are too late for McDow and Morris, but as McDow says: "Bounties will likely result in a huge increase in whistleblower reports based on the experience seen in the US."

Companies know only too well the damage that can be wrought when whistleblowers aren't contained, par-

ticularly if they take their concerns to the media. You don't need to look much further than the Commonwealth Bank (both in financial planning and its CommInsure division), National Australia Bank, IOOF and 7-Eleven.

If the proposals go through, it will give companies a lot to chew over.

Government spends $200,000 plumbing leaks

James Robertson
Sydney Morning Herald
19 September 2017

THE STATE GOVERNMENT has defended spending $200,000 hunting down the source of embarrassing leaks about budget blowouts in major transport projects by saying it is protecting community safety in an age of global terrorism.

In recent months, the state government has been embarrassed by a string of leaked sensitive cabinet documents relating to cost blowouts of its major infrastructure projects.

A document obtained by the opposition reveals the WestConnex motorway has attracted over $1 billion in compensation claims.

But a document released under freedom-of-information laws has revealed it spent nearly $200,000 in one month investigating the source of leaks in a single week in July alone, mostly relating to cost blowouts of the controversial WestConnex Motorway.

But under questioning from the opposition in question time on Tuesday, Transport Minister Andrew Constance said there was a need to investigate "major security breaches" within his department because of rising global cyber and physical terrorism.

Andrew Constance Photo: AAP

"If you think information that resides within the Department of Transport being leaked is some sort of laughing matter in today's world … in light of what's happening in the UK, in light of what's happening elsewhere around the world, you are kidding yourself," Mr Constance said. "We live in an era that relates to cyber terrorism and a whole raft of security issues.

"You only need to look around the world and what is going on. If it relates to the safety and security of the community, then I'm happy to stand here and debate [the matter]."

In the week in question, Labor obtained cabinet material estimating the Sydney gateway project connecting the WestConnex toll road to the airport would more than double in cost to up to $1.8 billion and that a compensation bill associated with the project could rise as high as $1 billion.

Mr Foley rejoined: "Is [the Minister] seriously suggesting that he suspects public servants in his own department of engaging in preparations for terrorist activity?

"If you want to play the terrorism card, bring some evidence, mate."

Mr Constance suggested that Opposition Leader Luke Foley had "aided and abetted a crime" and called on him to report the source of the leaks to the police.

The leaks in question related to the cost of WestConnex which has ballooned since a $10 billion project was proposed in 2012. The cost now sits closer to $17 billion.

"Whoever it is, and I'm sure he's made the commitment of a very, very good promotion in the future, we are right to investigate," he said.

At a budget estimates hearing earlier this month, the Secretary of Transport for NSW, Tim Reardon, confirmed the department had referred a recent string of leaks to both the police and the Independent Commission Against Corruption.

In the September inquiry, Mr Constance declined to provide estimates of the cost of other transport projects such as the revamp of Central Station and the Newcastle and Parramatta light rail lines, declaring such estimates "commercial in confidence."

The Greens' transport spokeswoman, Mehreen Faruqi, accused the government of shrouding information about major projects in secrecy, saying "it's no wonder people are leaking."

In the same July week that was the focus of the department's $200,000 investigation, a cabinet document handed to Labor also revealed that the increasing use of the M5 cashback scheme could blow a $90 million hole in the government's budget.

But the government has also been hit by other damaging leaks.

Fairfax Media has also reported on leaked documents revealing the extraordinary $18 billion cost of a planned F6 motorway extension, and that planners on that project had been told to disregard public transport alternatives to the motorway.

Other leaks have been less impactful. In late July, Labor touted yet another leaked document from within the department it claimed showed that pensioners will have to wait for five to 10 days before claiming their discounted Gold Opal cards.

WA whistleblower website labelled "dangerous and stupid"

Jacob Kagi
ABC, 12 July 2017

Mike Nahan wants you to email his office with tip-offs of government corruption.
ABC News: Andrew O'Connor

THE WA LIBERAL PARTY'S attempt to encourage whistleblowers to give it sensitive information about political opponents has backfired, with the website it set up referred to the State Solicitor's Office.

The website, set up by Opposition

Leader Mike Nahan urging whistleblowers to send the Liberals allegations of corruption, was also described by cyber security experts as "dangerous and stupid."

The wawhistleblowers.com website, which first emerged yesterday, urged anyone aware of misconduct by "public officers, including Government ministers and Members of Parliament" to submit the details via an online form.

That form would then send the details of the allegations to the Liberals.

The website requests users enter their email address and details of allegations, such as "acting corruptly", "engaging in gross misconduct" and "wasting taxpayer funds".

"This form is 100 per cent confidential," the website said.

Acting Premier Roger Cook said the Attorney-General was seeking advice from the State Solicitor's Office on whether the website was illegal.

"The website encourages a public servant who observes illegal conduct to not report it to a relevant authority … but instead to go to the Liberal Party," Mr Cook said.

"This is not only unwise and dangerous advice, but it is potentially illegal advice."

David Glance, director of UWA's Centre for Software Practice, said data submitted to the website was not encrypted and was therefore vulnerable.

Dr Glance also said he suspected the site was vulnerable to hacking attempts which would reveal submissions, urging possible whistleblowers to steer clear of it.

"It seems to have been put up with the minimum amount of thought put into it," he said.

"It is irresponsible, saying it is anonymous and then encouraging people to put an email address in and using an email form for this type of communication is ridiculous.

"If a third-year student did something like this, they would fail the assignment."

Government's "glass jaw" sent them straight to lawyers: Nahan

Dr Nahan defended the website, saying his office had taken steps to improve security and insisting that any evidence would be passed on to relevant authorities.

He accused the Government of having a "glass jaw", for referring the matter to the State Solicitor's Office.

"If the first action is to go to the lawyers, they have something to hide," the Opposition Leader said.

"It's standard policy to go out to the community, particularly in these days of social media, and ask people to directly provide you information."

Corruption and Crime Commissioner John McKechnie said anyone with evidence of serious misconduct should refer them straight to his agency.

"We are set up to deal with serious misconduct, we have the legal and the other tools to do so effectively," he said.

"I, frankly, don't know what this website is, I've had a look at it but I don't know its motivation."

Spoof website registered within minutes

After he was contacted by the ABC, Dr Glance registered the domain wawhistleblowers.com.au — differentiated from the original by only the '.au' suffix — and said it would be possible for him to duplicate the website within a few minutes.

"Then I could fool people to thinking it was the Liberals' version of the site and have people mail me with their whistleblowing," he said.

"It is so easily spoofed."

Craig Valli, from Edith Cowan University's security research institute, said there was a "high probability" cyber criminals could access information submitted to the site.

"The fact that the website has a mode of insecure access on it indicates there are other problems with the security of the data being held," he said.

After media queries, the website was updated, removing a note saying whistleblowers were afforded additional safeguards under the Public Interest Disclosure Act.

It also added a call for "broken election promises" and "any politicisation of the public sector" to be reported.

Mr Cook said disclosing of information to anyone other than the relevant authorities potentially meant whistleblowers were not protected by the Public Interest Disclosure Act.

According to publicly-available registration data, included below, the website is registered in Dr Nahan's name via the firm "Crazy Domains," with staffer Chris Garner's email used to lock in the domain.

WIPO's Gurry refers to US Congress as a "kangaroo court"

Bea Edwards
Government Accountability Project (GAP), 8 August 2017

FRANCIS GURRY, the embattled Director General of the United Nations' World Intellectual Property Organization (WIPO), publicly denounced the US Congress as a 'kangaroo court' because it has been scrutinizing his dubious dealings with the North Korean government and his treatment of WIPO whistleblowers. The contempt with which he views US Congressional oversight of United Nations activities is palpable in the statements he gave Fairfax media during a recent interview:

> We're supposed to live in a world in which we aspire to the rule of law — but what does it have to do with a congressman from Nebraska?

Gurry went on:

> [US Congressional hearings] are a kangaroo court – come on!

Francis Gurry

A couple of thoughts: first, as far as we know, congressmen — even those in Nebraska — respect and observe the rule of law, and second, here in the United States, we like to think of congressional hearings as part of the democratic process and not as sabotage of legal rights.

And so, we might ask — who is this guy and why is he saying such terrible things about our government?

Those would be fair questions.

Taxpayers in the United States have long been ambivalent about the funding the Congress allocates for the United Nations. Over the years, the UN has been the site of scandals that even its most ardent defenders have trouble explaining. There was Oil-for Food, a corrupted multi-year operation through which private corporations paid kickbacks to the Saddam Hussein regime through a UN program, in exchange for lucrative contracts. By the time the dust settled on that one, at least $1.7 billion had been found in Saddam's pocket.

Then there was the cholera epidemic brought to Haiti by UN peacekeepers, untrained in the rudimentary technologies of safe sewage disposal. It turns out that these guys did not realize (or did not care about) what most campers know: don't dump your latrine upstream from the drinking water. At last count, about 10,000 people have died.

And in 2015, news broke of systematic sexual exploitation and abuse of children by UN peacekeepers and staff. The reports were horrific: children as young as eight were exchanging sex for yogurt rations.

In not one of these incidents was there anything resembling accountability at the United Nations, either for the individuals responsible or at the level of the Organization itself, which, by claiming immunity, exempts itself from legal proceedings in national courts.

In the United States, our only recourse is through our Congress, which periodically balks at financing an organization that tacitly condones such conduct. Because the Congress has no authority to compel the United Nations to release documents or testimony, its members are largely dependent on UN whistleblowers for information about what's going on. In part, to protect its sources, the Congress has passed legislation making full US funding for the UN contingent on the implementation of best-practice whistleblower protections.

This circuitous, but potentially effective restraint on the worst abuses of UN legal immunities, has now drawn Francis Gurry's ire because he retaliates against WIPO whistleblowers with impunity, and US funding for WIPO has been withheld for two consecutive years.

For arcane financial reasons, the amount of money involved for WIPO is minuscule, but no matter — Gurry is irked. He as much as says so, lamenting how some congressman from Nebraska can question his (Gurry's) integrity. The ignorant Congressman obviously doesn't know who Francis Gurry is …

And we are therefore obliged to respond, no. We don't know and we don't care. Because unlike Gurry, we are governed by the rule of law — and US law requires withholding 15 percent of US funding for UN agencies that allow whistleblower retaliation.

At GAP, we know that this year, WIPO and the Secretariat of the United Nations both fall into that category.

In all the legal manoeuvring, something gets lost — the truth

Wendy Addison
SpeakOut SpeakUp, 23 March 2017

A university student cautiously approached me following my lecture on Speaking Up and Whistleblowing. She had been an intern at a UK bank and whilst there a senior employee had asked her to commit an unethical act. The student shared that whilst it was clearly unethical she wasn't sure if it was illegal as well. She had declined to act on his request but felt vulnerable, exposed and afraid, with a secret gnawing of her heart telling her to speak up. Her principles had been challenged, principles that invited her to be intolerant of moral laxity and not to turn away from fear. But she remained silent, feeling disempowered.

I shared her story with a specialist in Whistleblowing law, to explore whether interns are protected under PIDA (the UK protected information disclosures Act). It turns out that if an intern is not paid they are not deemed a "worker" under the legal definition and would therefore not be protected under PIDA.

However, what alarmed me was the lawyer's attitude toward the event. "Did the intern make a report or disclosure?" I was asked. When I shared that she hadn't made a disclosure, the response, "well then it doesn't matter then, does it" angered me. Whether a worker, paid or not, formally blows the whistle on unethical conduct or not isn't the only measure of "what matters."

> What matters is that a staff member attempted to persuade an intern to commit an unethical act.
> What matters is that the intern's principles were challenged.
> What matters is that the intern didn't know her legal rights.
> What matters is that she was unable to speak up informally or blow the whistle formally.
> What matters is that she has been deeply impacted by her seeming respect for fear than her own need to find her voice.

Laws, rules and morals

Morality emerges from humanity precisely because it exists to serve humanity.

Although we live in a rules oriented world it is our human-based (humanistic) moral system that mainly drives our behaviours. In the grand scheme, morally motivated citizens will behave or believe as they do, almost no matter what the law tells or demands of them.

In our society, people are so accustomed to the idea of every law having a lawmaker, every rule having an enforcer, every institution having someone in authority, that the thought of something being otherwise has the ring of chaos to it. As a result, when living our lives without reference to some ultimate authority regarding moral actions, the legal stance is to consider a person's values and aspirations as arbitrary, as is demonstrated in my shared scenario. It is often argued that there would be no way to adjudicate disputes between people, no defence of a moral stand being possible in the absence of some absolute point of reference, most often a legal one.

Good, unambiguous laws help us follow the rules but we ought to recognise that ordinary human beings are the actual source of laws, rules and regulations and these are emanated through human aims, similar to everyone else's. When a lawmaker is said to be needed for every law, the result is an endless series, since someone must be the lawmaker of the lawmaker's laws.

In considering whether, how and if the intern would have been protected by the UK Whistleblowing law, I've turned to focus on why, to date, current whistleblowing laws have mostly been ineffective tools in protecting whistleblowers, changing organisational cultures or social attitudes and norms.

I stand to be corrected, but would suggest there are many more negative than positive outcomes for whistleblowers. The common theme weaved throughout a whistleblower's journey is this: A "worker" observes unethical and perhaps illegal behaviour and attempts to speak up informally, mostly in their professional role and via the chain of command, to halt the unethical practice. Attempts to speak up internally are met with obfuscation, forcing the worker to blow the whistle formally, either via the formal organisational channel or externally to a "prescribed person." Depending on how safe and robust the formal whistleblowing channel is, and more importantly, what the culture of the organisation is, an investigation will begin, or they will find cause to dismiss the whistleblower, or both.

It is at this juncture, that the whistleblower finds themselves in ambiguous, surprising, if not alarming, legal territory. Who would expect to blow the whistle on an unethical practice, be dismissed and then, most surprising of all perhaps, find themselves in an Employment Appeals Tribunal (EAT)? The very first action in this chain of events is to halt an unethical practice and yet they're in an Employment Appeals Tribunal. The dots joining unethical practices, sometimes criminal, blowing the whistle and an employment appeals tribunal are precarious.

The easy explanation is that PIDA sits within the labour laws and not the criminal laws. Effectively, the unethical practice could continue, escalate or, hopefully, be halted. However, the focus, often in public view, is drawn away from the malfeasance to be placed onto the whistleblower, now jobless, unemployable, running out of money and possibly up against an organisation with power, plenty of time and resources. The EAT case revolves around the whistleblower attempting to prove causation for their dismissal and being granted permission to secure compensation, which can take years, the longer the better for most organisations. The tragedy of this scenario is that whilst the unethical practice the individual blew the whistle on fades into the background and the collective memory of society, the whistleblower is left fighting a war of attrition, sure to leave them financially, mentally and emotionally crippled. This in turn leads whistleblowers, and the public, feeling as though whistleblowers are harassed rather than served.

The law does not offer protection to whistleblowers; it enables those treated badly as a consequence of whistleblowing to seek compensation.

Plenty have argued that the law is impotent to impose a change in attitudes about whistleblowing and I'd like to focus on specific areas. (with thanks for insights from Professor of Economics at Stanford, Matthew Jackson)

The interplay between laws and social norms

Generally there is an interplay between social norms and the enforcement of laws. However and because whistleblowing is not, and may possibly never be, a social norm, there is a strong conflict between the law of protecting whistleblowers and maintaining the prevailing social norms and behaviours of loyalty and cohesion. This in turn results in whistleblowing laws being perceived as ineffective and viewed with skepticism and mistrust.

The legal domain for whistleblowers

All legal regulators have a domain in which action will be appropriate, by subject matter, by hierarchy (local, regional, national, international), or by mode of action. Outcomes are perceived as more or less legitimate, depending on which legal entity issues the ruling.

The link between Whistleblowing and Employment Appeals Tribunal Courts lack legitimacy with regards to addressing the initial action taken by the whistleblower. The EAT responds to the second, follow-on action, that of dismissal. Awareness of this seeming incongruence prompts individuals in society to feel less morally obligated to co operate to take voluntary action like whistleblowing.

Societal expectations

The EAT court fails to persuade on the moral issues of whistleblowing because the domain in which the whistleblower finds themselves runs counter to public expectations. This failure to meet expectation hampers the EAT court in any attempts to change public attitudes towards whistleblowers and whistleblowing.

Fair and just?

Most outcomes for Whistleblowers are viewed as unjust and unfair which undercuts the perceived legitimacy of the law, with compliance and cooperation minimised. This is because the law fails to comport to citizens' intuitions of justice. When the legal system comports with justice, it gains legitimacy and compliance because citizens have learned to look to the law as a source of moral guidance

Helpful laws make things easier. Unhelpful laws do exactly the opposite, making everyone's lives harder. The problem is that unhelpful laws often end up in a kind of legal Bermuda Triangle with no one empowered or resourced to change them.

Wendy Addison is founder of SpeakOut SpeakUp, http://www.speakout-speakup.org

Conference and annual general meeting

Conference
Saturday 18 November 2017
8.15am for 9am

Speakers

Whistleblowers telling it their way

Julia Angrisano, National Secretary, Finance Sector Union
Margaret Banas, duelling with Corrective Services
Yve de Brit, public service whistleblower
Richard Gates, neuroscientist, University of New England
Karen Smith, Aboriginal Heritage Office, Kuringai Council
Robert Tiernan, air traffic controller whistleblower
(others to be notified)

AGM
Sunday 19 November 2017
8.15am for 9am

Venue Uniting Church Ministry Convention Centre on Masons Drive, North Parramatta, Sydney

Getting to the venue from Parramatta railway station. Go to Argyle street, on the south side of the station. Find Stand 82, on the station side of Argyle Street. Catch bus M54, at 7.48am, 8.07am or 8.26am or 655 at 8.20am. Ask the driver to drop you off at Masons Drive. Then, it's 2-3 minutes walk, on your left. Check https://transportnsw.info/#/ for other options.

Non-members $65 per day, includes lunch & morning/afternoon tea. Optional $40 extra for dinner onsite 6pm Saturday night

Members, concessional cardholders and students $45 per day
This charge may be waived for members, concessional cardholders and students from interstate, on prior application to WBA secretary Jeannie Berger (jayjellybean@aol.com).
Optional dinner @ $35 a head, onsite 6pm Saturday night.

Bookings
Notify full details to treasurer Feliks Perera by phone on (07) 5448 8218 or at feliksfrommarcoola@gmail.com or president Cynthia Kardell (for phone/email see below under enquiries).

Payment
Mail cheque made payable to Whistleblowers Australia Inc. to the treasurer, Feliks Perera, at 1/5 Wayne Ave, Marcoola Qld 4564, **or**
pay Whistleblowers Australia Inc by deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626 **or**
pay by credit card using PayPal to account name wba@whistleblowers.org.au.

Low-cost quality accommodation is available at the venue
Book directly with and pay the venue. Call 1300 138 125 or email service@unitingvenues.org

Enquiries: ring national president Cynthia Kardell on (02) 9484 6895
or email ckardell@iprimus.com.au

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Whistleblowers Australia conference

See page 15 for details

Annual General Meeting

Whistleblowers Australia's AGM will be held at 9am Sunday 19 November at the Uniting Conference Centre, North Parramatta (Sydney). See page 15.

Nominations for national committee positions must be delivered in writing to the national secretary (Jeannie Berger, PO Box 458, Sydney Markets NSW 2129) at least 7 days in advance of the AGM, namely by Sunday 12 November. Nominations should be signed by two financial members and be accompanied by the written consent of the candidate.

Proxies A member can appoint another member as proxy by giving notice in writing to the secretary (Jeannie Berger) at least 24 hours before the meeting. No member may hold more than five proxies. Proxy forms are available online at http://www.whistleblowers.org.au/const/ProxyForm.html.

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.

Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone 07 5448 8218, feliksfrommarcoola@gmail.com