

*“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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## A disturbing story from the not-for-profit sector

Michael Cole

### Background

THE CEO of a disability not-for-profit association recruited me onto the board. Most of the members of the organisation, North West Disability Service (NWDS), were long-term friends and supporters of the CEO. Parents of service users were not encouraged to become members. Furthermore, the available application form was non-compliant with the NWDS Constitution in not having space for the signatures of two members who personally knew the applicant. That allowed the board to reject unwanted applicants as “not known to us.”



Five previous board members left the board after opposing the CEO. The CEO refused, contrary to the NWDS policies, to allow the board to address several senior staff complaints about being bullied by the CEO.

The association was constituted to benefit the disabled, *with priority for those in our Local Government Area (LGA)*.

### Speaking up

I expressed concern about the millions of dollars spent in a distant LGA, while there was no visible progress in our LGA where 95% of users lived, and concern that local parents were being misinformed.

The CEO claimed I had assaulted her. She claimed the assault was “clearly seen” by two witnesses, required medical attention and that she had reported this assault, and another, to police and obtained incident numbers.

An independent investigation found that the alleged witnesses did not report seeing anything. The CEO could not supply any medical substantiation. NSW police advised that the CEO had made no reports, so there were no incident numbers.



The investigation found the CEO’s behaviour was a dereliction of duty and that she was failing her job description, and that the board lacked understanding of governance.

In spite of the independent investigator’s findings, the CEO continued to claim that everything she had said was true. Nearly all the board members rejected the external investigation. After they were re-elected at the next annual general meeting, I was expelled from the association.



A bored board

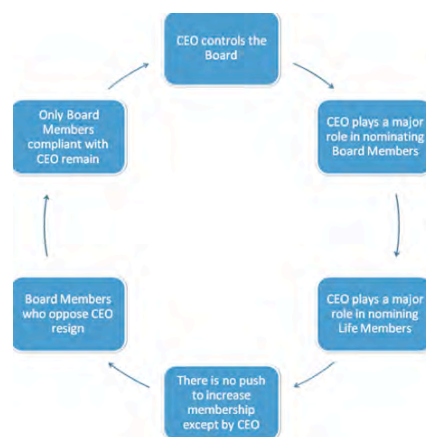
Another board member became concerned about reports about bullying of senior staff by the CEO and the lack of action by the board. He attempted to investigate but was detected by the CEO and accused by the board of divulging confidential information. However, no evidence supporting this accusation was provided. He left the board.

A different board member (BM) had an intellectual disability and was supported at board meetings by his father. He did not attend one board meeting but gave his written proxy to the secretary. Another board member falsely claimed to have BM’s proxy and together with the CEO removed BM from a social event and induced him, in the absence of his father, to vote opposite to his actual intentions.

I have documentation to support all the statements in this article.

### Regulatory capture

Regulatory capture is where the entities being regulated gain control of the regulator, for example, developers getting control of the Council.



Few of the board members seemed to know much about governance, and the constitution, codes and policies were repeatedly breached. Some had children with difficult behaviours that were being accommodated by the CEO. It appeared that the CEO arranged for the appointment of most board members and new members (using the correct form), and dictated all policy and direction. Board members who displeased her ended up leaving.

### The regulator

Responding to a complaint, NSW Fair Trading said no law under the *Incorporation of Associations Act (NSW)* had been breached.



### Conclusion

The case study illustrates how influence can be exerted within a not-for-profit organisation, how accountability can be avoided, and the futility of reporting problems to the current regulators.

Michael Cole is vice president of Whistleblowers Australia.

## Myth system or operational code?

Brian Martin

You're walking along a downtown street, not at an intersection, and cross to the other side to get to a shop. In Australia, legally, you're supposed to cross only at an intersection, when the "walk" light is on. But you decided it was safe enough to cross. Besides, loads of people were doing the same thing, and no one is ever charged with jaywalking (crossing a road when there's traffic). Or are they?



To understand what's going on here, it's useful to apply some labels. The official rules — the law in this case — can be called a myth system. The law says jaywalking is illegal, but most of the time the law is not enforced. The law on jaywalking is a type of myth or fiction.

What actually happens is that people routinely jaywalk and are never charged or even warned. This can be called the "operational code." People know, from experience or observation, that jaywalking is not penalised. That is the way the law is applied in practice — by not being enforced. If you know the code, namely non-enforcement, then you know when you can jaywalk without penalty.

Of course, jaywalking might be dangerous or annoy drivers. That's a different set of issues, also part of the operational code. It's unacceptable to stand in front of moving vehicles or to shout abuse at drivers. The operation code doesn't say anything goes, but rather prescribes acceptable violations of the law.

A friend of mine in Brisbane was fined \$50. His transgression? He was standing at a corner waiting for the "walk" light to go on, and stepped out onto the street one second beforehand. For a pensioner, \$50 was a big payment. Half a dozen other pedestri-

ans were at the same corner and stepped out before him, but they were younger and got away.

He was outraged and wrote a letter to the newspaper. He knew the operational code, which was that pedestrians are not fined for crossing early at a crosswalk. But he was fined. It turned out that the police applied the law in a technical fashion. They applied the rules of the myth system, thereby raising money at the expense of a few unlucky pedestrians.

You're driving along a suburban street about 10km/h above the speed limit. This is nothing special. Most other drivers do the same. In fact, you become annoyed when the driver ahead of you goes 5km/h less than the speed limit, though this is quite legal.

The myth system is that people are supposed to obey the law and transgressors are subject to penalties. The operational code is that breaking the law just a little, when no one is hurt, is okay. This helps explain some drivers' outrage over speed cameras. They are a challenge to the operational code, which is that driving safely is okay even when laws are technically broken.

### Reisman on bribery

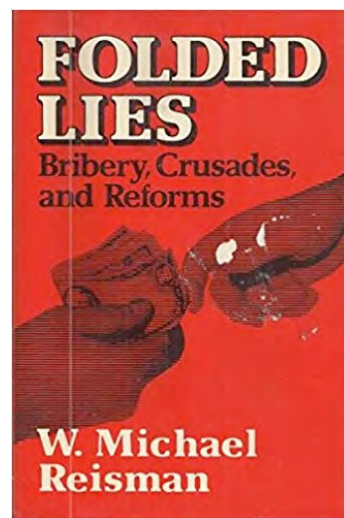
These thoughts are inspired by a book by W. Michael Reisman titled *Folded Lies: Bribery, Crusades, and Reforms*. Reisman applied the ideas of the myth system and the operational code to US corruption issues, especially bribery.

*Folded Lies* was published in 1979. I read it a few years later and took some notes. The book is written in a rather abstract style, yet filled with numerous examples from US politics and administration.

Recently I came across my old notes on the book and thought, "Hey, these ideas are relevant to whistleblowing." So I obtained a copy and read it again. Reisman didn't talk about whistleblowing but his ideas are directly relevant. Here's how he explains the myth system and operational code at the beginning of his book:

Most people learn early that there are things they can get away with; from the perspective of an observer, some social "wrongs" are selectively permitted. An observer may distinguish, in any social process, a *myth system* that clearly expresses

all the rules and prohibitions (the "rights" and "wrongs" of behavior expressed without nuances and shadings), and an *operational code* that tells "operators" when, by whom, and how certain "wrong" things may be done. An operator is someone who knows the code in his own social setting — certain lawyers, some police officers, some businessmen, an agent, a kid at school. (p. 1)



### Whistleblowers versus the operational code

In many organisations, the operational code allows things to happen that an outsider would see as wrong or even terrible. In some families, beatings of children are a routine occurrence. In some churches, sexual abuse by clergy was not penalised. In some businesses, siphoning off money for personal use is accepted. In other businesses, dumping toxic waste into public waterways is the norm.

In most of these examples, the operational code allows certain activities that others, on the outside, might condemn. The outsiders are subscribers to the myth system. If they are informed about the activities, they want something done.

In many cases — far from all — whistleblowers endorse the myth system. They believe in honesty, fairness and the rule of law. So when they encounter damaging and dangerous activities, they want to do something about them.

Those on the inside, participating in the activities, are subscribers to the operational code. They can react with

fury when someone tries to invoke the myth system. After all, the operational code is *the way things are done*. Anyone who goes against this is a traitor.



Whistleblowers have a chance of making a difference when outsiders widely endorse the myth system and demand that something be done about abhorrent operational codes. A good example is paedophilia, which over the years has become increasingly stigmatised. As a result, paedophilia in churches became a massive scandal.

Another example is animal welfare, for which there is a growing movement and public concern. As a result, whistleblowers who expose ill treatment of animals, for example in the live animal trade, can trigger public outrage.

On the other hand, in areas where there is little public awareness or concern about issues, the operational code can continue with little disturbance. An example is cheating on income tax. The myth is that everyone pays their fair share of tax. The operational code for big businesses and wealthy individuals is that tax dodges will be exploited to the hilt, while governments are lobbied or pressured to maintain or expand loopholes.

Now and then there are media exposés of large companies that pay little or no tax, but these seem not to create a groundswell of rage against big-company tax evasion. One reason may be that tax avoidance is a national pastime, and minimising one's own tax is seen as acceptable. In other words, the operational code is that it is okay to avoid tax as long as you can get away with it. There are so many small cheaters that cheating is seen as normal.

### Watchdogs

Government regulatory bodies, commonly known as watchdogs, are

supposed to ensure laws are followed and that the public is protected from unfair and dangerous activities. The myth is that these watchdogs are doing their job well and keeping corruption and abuse under control. In other words, you don't need to worry about injustice because the watchdogs are protecting you.

In many cases, regulatory agencies become close to the enterprises they are supposed to regulate, and become lapdogs: they are toothless and called "captured bureaucracies." Another way of understanding lapdogs is that they have subscribed to an operational code of minimal intervention, cooperation with regulated organisations and facilitation of their activities. The public might believe there is effective regulatory oversight, but this is a myth.

Next consider whistleblower protection. The myth is that whistleblower laws, and the agencies that are supposed to implement them, actually work. The operational code is that little will be done that confronts organisational elites. Organisations will not be given serious penalties, dismissed whistleblowers will not be reinstated, and managers who institute reprisals will not be penalised. Reisman writes:

The function of the legislative exercise is not to affect the pertinent behavior of the manifest target group, but rather to reaffirm on the ideological level that component of the myth, to reassure peripheral constituent groups of the continuing vigor of the myth, and perhaps even to prohibit them from similar practices. As elsewhere, the mere act of legislation functions as catharsis and assures the rank and file that the government is doing what it should, namely, making laws. (pp. 31–32)

Applied to whistleblowing, what Reisman is saying is that whistleblower laws aren't intended to affect the behaviour of employers but rather to encourage popular belief that the government is looking after whistleblowers. The aim is to sustain the myth of whistleblower protection while allowing organisational operational codes to continue as usual.

Whistleblowers, perhaps more than most members of the public, are subscribers to the myth system. They expect that watchdog agencies will

help them and they call for better whistleblower protection. However, the most that happens is governments come up with more rhetoric and more ineffective laws.



### Implications

To be effective, whistleblowers need to understand the difference between the myth system and the operational code. This isn't always easy. The myth system is regularly endorsed by leaders, within organisations and in the media. So it is possible to hear heartfelt support for whistleblowers and to think that they will actually be supported. The challenge is to identify the operational code that is relevant to the situation, especially the code within an organisation. There is even an operational code within organised crime.

It is the operational code, namely the set of beliefs and practices that define what is expected and acceptable, that determines the response to a whistleblower. In general, the code within organisations is that whistleblowing isn't welcome.

This should be obvious. Governments say they support whistleblowers, but they also maintain laws that prohibit public servants speaking out, institute searches for leakers, pass laws to criminalise whistleblowers and journalists on national security matters, and do not enforce whistleblower laws when employers take reprisals against whistleblowers. To identify the operational code, look at what people do and set aside what they say.

It is also valuable to understand the power of the myth system, in particular when it can be used to challenge wrongdoing. Within an organisation, it might be common practice to cheat customers, avoid tax, dump chemicals and appoint cronies. However, outside the organisation there are two types of people who can help. Some of them are subscribers to the myth system:

they think it's wrong to cheat and cause damage, and they want something done about it.

The second group of helpers are ones who see an opportunity to pursue their own interests by invoking the myth system and triggering a crusade. Reisman says, "... there may be a point where perception of discrepancy between myth and operational code becomes so great that part of the content of the myth system changes, belief in it wanes, or crusades for reassertion of the myth burst forth." (p. 24)

### Crusades and reforms

A crusade sounds like it might make a difference. Let's protect whistleblowers! However, Reisman says crusades are sound and fury, a lot of noise about fixing problems, but never really intended to change the basic way things happen.



In a crusade, politicians pass new laws, giving the appearance that the problem is being addressed. However, the laws don't work in practice, and perhaps were never intended to. There are several ways that new laws can be neutered. Sometimes it is by narrow writing of the law. For example, early Australian whistleblower laws gave no protection to private-sector employees, or when workers went to the media.

Another way to limit the impact of a new law is to give inadequate funding to the watchdog body, or burden it with onerous bureaucratic requirements. In Australia, anti-corruption agencies are woefully underfunded. In New South Wales, the Independent Commission Against Corruption can take up only a few percent of the matters brought to its attention.

Another technique is to staff regulatory bodies with incompetent staff, or ones who are sympathetic to the industry being regulated. The Australian Securities and Investment Commission, as revealed in the royal commission, was more attuned to the top management of banks than to the

revelations about corruption provided by whistleblowers.

In a crusade, a few individuals may be sacrificial lambs. They are penalised, lightly or heavily, for doing what hundreds of others did. To the public, it seems like justice has been done. Sometimes, though, there are no sacrificial lambs. In the global financial crisis, not a single US banker went to prison or was even charged, except for one who was actually a good guy.

What happens in a crusade is a symbolic endorsement of the myth system. The myth in Australia is that whistleblowers are valued and protected. The song and dance involved in passing new whistleblower protection laws encourages the belief that, yes, whistleblowers actually are valued and protected. Meanwhile, the operational code is largely unchanged: power structures remain untouched and routine practices stay the same. This means that it remains just as risky as before to blow the whistle.

Reisman uses the term "reform" to refer to changes in the operational code. For him, a reform means that people's behaviour changes. This can happen for various reasons. Sometimes the popular pressure for change is so great that elites decide they need to change their practices in order to maintain their money and status.

Reisman says you sometimes can't tell the difference between a crusade and a reform until years or decades later. For example, a reform might be quietly reverted, and some crusades eventually lead to changes in the operational code. To my mind, defining things this way just makes them confusing. Nonetheless, Reisman points to an important issue. To see whether laws are making a difference, check out the state of play down the track. Reisman:

Even if passed, "reform" legislation, that is, legislation actually *intended* to change the operational code, is not equivalent to reform, for it may be blunted by operators at lower levels of the bureaucracy who may prevent or indefinitely postpone the drafting of rules or secondary, implementing legislation. If implementing legislation is actually created, it may be starved to death by an inadequate budget allocation

or emasculated by the assignment of incompetents to positions of responsibility. If the implementing machinery actually tries to be effective, it may be overwhelmed by larger and superior legal teams who will mount adjudications protracted even beyond the wildest dreams of the pettifoggers of Bleak House or conclude settlements that are translated into overhead costs and passed on to consumers. (p. 114)

Whistleblower laws have been on the books in Australia since the 1990s. Yet it is exceedingly rare for one of the laws to be invoked against an employer who has taken reprisals against a whistleblower. This basically means that the laws are not being enforced — one of the typical ways that crusade-inspired legislation is prevented from having any impact on the operational code. So, in Reisman's terms, the entire exercise of passing Australian whistleblower laws has been a giant façade. It reassures members of the public that the government is looking after whistleblowers, while ensuring that there is no substantial change in actual practices within workplaces.

I am waiting for the day when governments consult with whistleblowers and produce an informative leaflet on how to be an anonymous leaker or an effective change agent, and then circulate it to employees around the country. That is a fantasy. Judging by past behaviour, governments will continue to assume that they are the saviours, that they will provide protection, so there's no need for employees to develop their skills or gain extra power. Governments will continue to promote the myth of protection, while operations will be same old, same old.



Brian Martin is editor of *The Whistle*.

### The most outrageous whistleblower retaliation you've never heard of

Mark Worth  
Executive Director,  
European Centre for  
Whistleblower Rights  
16 January 2019

THIS IS THE STORY of Brigitte Fuzellier and Kolping International.

Chances are, neither of these names sound familiar to you. The unfortunate obscurity of this decade-old case is surpassed only by the atrocious acts of retaliation inflicted upon Fuzellier.

Kolping International is a large Catholic charity based in Cologne, Germany whose many Christian-themed slogans include, “We act on behalf of Jesus Christ.” In 2008 Kolping hired Fuzellier to run its operations in Paraguay and clean up its financial situation. A German citizen, Fuzellier is a well-known charity leader and community worker who has lived in Paraguay since 1987.



After Fuzellier discovered widespread and well-documented misconduct and degeneracy in Paraguay, Kolping fired her in 2010 and began an unabated retaliation campaign that has included public humiliation, smearing her reputation throughout her community, filing a series of dubious criminal charges, and using questionable legal tactics to limit her ability to travel.

The retaliation has been particularly insidious considering that no one has doubted what Fuzellier discovered in Paraguay.

Rather than being used as a school, a Kolping building funded by German taxpayer money was being used as a brothel. An entire soccer team is said to have availed itself of the services in the *Casa de Citas* (“House of Appointments”), according to a report by the German magazine *Der Spiegel*. Customers enjoyed beer and liquor before going upstairs, which was stocked with beds — “a true orgy.” The only equipment in the school was a single, poorly functioning sewing machine, Fuzellier said.

After reviewing the books, Fuzellier discovered that a large chunk of €1.4 million that Kolping received from German and EU foreign aid agencies did not go toward its intended purposes. Only after a series of investigations did Kolping repay €241,000 to the German government, according to media reports.

A probe by the EU’s anti-fraud office, OLAF, ended without explanation, says Fuzellier. She has signed bank cheques and other evidence that she says proves vast misspending of EU funds. You can see the cheques here, in the only known video about the scandal in English (<https://bit.ly/2ss6mNa>).

Fuzellier has piles of evidence about many other episodes and irregularities in Paraguay, including misuse of other public funds, suspicious purchases and sales of equipment and property, poor services to local residents, and threats to former employees. She said a bakery worker was killed when he fell headlong into a poorly-made, makeshift production machine. The bakery was supposed to have professional equipment, but instead was using a homemade machine.

Since firing Fuzellier nine years ago, Kolping and people associated with the Catholic charity have been engaged in a non-stop retaliation campaign against her. Because it only has been publicly reported in Spanish and German, the campaign is not known to the broader public. And it is virtually unknown within the international whistleblower protection community.

The campaign started with Kolping issuing a press release announcing its dismissal of Fuzellier that — ironically

— accused her of many of the same actions that Fuzellier has evidence Kolping committed.



Brigitte Fuzellier

Kolping managers then filed criminal defamation charges against her in Paraguay. Her “crime” was sending a private e-mail that was never publicly released. How Fuzellier could be charged with defamation — which requires a false statement to be published — remains a mystery. Fuzellier was convicted and only spared from prison after an international campaign raised €24,000 so she could pay a fine.

Fuzellier was then charged — falsely, she says — of financial misconduct. Because there is no evidence of misconduct, she wonders how Kolping managers convinced prosecutors in Paraguay to file the charges. As the case dragged on for four years, she was banned from leaving Paraguay. This virtually put an end to her Eco-Loofah business, which employed hundreds of local people including members of the indigenous Macá Tribe.

She was cleared of these charges last June. “After eight years,” she said at the time, “the persecution by Kolping has come to an end. My existence has been destroyed, but the truth has triumphed.” Now, people associated with Kolping are at it again. Last

month Fuzellier was re-charged with allegations of which she already has been cleared — raising questions of double jeopardy. Representing Kolping in the case is controversial, politically connected lawyer Guillermo Duarte Cacavelos. Once again, she may be banned from leaving the country. And once again, Fuzellier wonders how people associated with Kolping were able to convince prosecutors to file these dubious charges.



Guillermo Duarte Cacavelos

We are rallying international support for Brigitte Fuzellier, including seeking prompt intervention by the Inter-American Commission on Human Rights at the Organization of American States.

We also have begun a major investigation into Kolping's finances and political connections in Germany and elsewhere. We have learned that Kolping-affiliated companies have amassed a global hotel, resort and real estate empire valued at hundreds of millions of dollars, and which reaps millions in profits annually. Company records show a network of politicians and church leaders intimately linked to the German Bundestag, Chancellor Angela Merkel's Christian Democratic party, and the Vatican.

This is a major international scandal. We will keep you apprised of any developments. If you live in country where Kolping operates and you have any helpful information, please send it to us.

This is an essential struggle that must be won!

## Adele Ferguson praises whistleblower bravery after Australia Day award

Staff reporter  
*Sydney Morning Herald*  
26 January 2019

ADELE FERGUSON, the decorated investigative journalist for *The Sydney Morning Herald* and *The Age*, has paid tribute to whistleblowers after being honoured in this year's Australia Day awards.

Ferguson, whose award-winning investigations into financial services, franchising and retirement living industries have sparked numerous inquiries including the Hayne banking royal commission, said was "proud and humbled" after being appointed a Member of the Order Australia for her services to journalism.

But she said her stories couldn't have happened without the bravery of whistleblowers, and victims of corporate malfeasance, who risked their livelihoods by speaking to her.

"With all of these investigations, none of them would have had the traction they had without whistleblowers putting everything on the line, and the victims coming forward," she said.

"Words fail me over how brave these people are. And they empower others to speak up, and it becomes a snowball effect."



Adele Ferguson

In recent years, Ferguson has conducted groundbreaking investigations into the Commonwealth Bank and its life insurance business, CommInsure, the National Australia Bank, financial services company IOOF, franchise

retailers 7-Eleven, Domino's Pizza and the Retail Food Group as well as aged care provider Aveo.

As a journalist and columnist for the *Sydney Morning Herald* and *The Age*, and columnist for the *Australian Financial Review*, Ferguson was won eight Walkley Awards (including the Gold Walkley) as well as two Gold Quill awards. Several of the awards for cross media projects she helmed with the ABC's *Four Corners* program.

The investigations uncovered myriad scandals within the banking sector, exposed misconduct within franchising and also unearthed wrongdoing within the retirement home industry.

Ferguson is currently writing a book, *Banking Bad: How greed and broken governance conspired to break our trust in corporate Australia*, to be published by HarperCollins Australia. It will build on her more than four years of reporting into bad behaviour by the banks.

The federal government established a royal commission into the banking sector in late 2017 following Ferguson's investigations.

Other media sector honorees in this year's awards include financial commentator Alan Kohler, former editor in chief of *The Australian* newspaper, Chris Mitchell, and ABC Melbourne breakfast radio host Jon Faine.

"It's a really an award for so many people," Ferguson said of her Order of Australia award. "It symbolises a lot of the journalists who worked with me, and the whistleblowers."

James Chessell, executive editor of the *Sydney Morning Herald* and *The Age*, said the accolade was warranted.

"If ever there was a journalist who deserved an award like this it is Adele Ferguson. Her relentless pursuit of the truth has come at some personal cost over the years yet she has never wavered," he said.

"Her reporting paved the way for the banking royal commission but her impact extends beyond that. From exposing underpayment in the retail sector to disgraceful practices in nursing homes to the exploitation of franchise owners, Adele's work has resulted in meaningful change for countless Australians damaged by the abuse of money and power."

## ATO whistleblower's case highlights need for reform

Adele Ferguson

*Sydney Morning Herald*, 2 March 2019

ATO WHISTLEBLOWER Richard Boyle looked tired and overwrought when he stood in the Magistrates Court in Adelaide for a hearing into 66 charges that could put him away for 161 years if found guilty.

His legal battle with his former employer, the Australian Taxation Office, has become a lightning rod for all that is wrong with whistleblower protections in this country.



Richard Boyle. Credit: James Elsby

It is an attempt to pressure and criminally punish whistleblowers for the theft of information by one means or another.

Besides facing charges more extensive than most serial killers and mass murderers, Boyle is going up against one of the most powerful institutions in the land. It has deep pockets, while he is forced to rely on legal aid.

If the opening salvo is any indication, the case will drag on.

It has been adjourned until March 29 on the basis the prosecution left it until the day of the hearing to present Doyle with a Prosecution Statement of Facts, which outlines in detail each charge as well as the context of what he is up against.

In the past few years the role of whistleblowers has been publicly lauded in Australia for the service they have provided in exposing wrongdoing, including the biggest case of corporate wage fraud inside convenience store giant 7-Eleven, and misconduct in the banks, which ultimately resulted in a royal commission, along with many more.

As AJ Brown, professor of public policy and law at Griffith University, a leading world authority on whistleblowing, noted in a book he co-authored in 2014, *International Hand-*

*book on Whistleblowing*: "In the modern age of institutions, whistleblowing is now established as one of the most important processes — if not the single most important process — by which governments and corporations are kept accountable to the societies they are meant to serve and service."

The former prime minister Malcolm Turnbull acknowledged as much at Westpac's 199th birthday party when he gave the banks a serve and encouraged more whistleblowers to speak out.

Despite this public support for whistleblowers, which culminated in a parliamentary inquiry and amendments to the legislation, little has changed.



Former prime minister Malcolm Turnbull encouraged whistleblowers to speak out. Credit: Dan Himbrechts

The regime is still confusing and has too many gaps compared with some overseas regimes. In the United States, for example, whistleblowers are financially rewarded.

In Australia, there are no rewards, just years of pain, as the prospect of long-term unemployment looms large and in Boyle's case the prospect of jail time.

Boyle's case highlights the need to legislate a public interest defence, to allow any conviction to be suspended or set aside where it can be shown that in committing the offence the whistleblower served the public's interest and not his own.

Boyle lodged a disclosure under the Public Interest Disclosure Act in October 2017, which was dismissed by a senior ATO investigator who read through his allegations about the Adelaide branch debt recovery unit.

"The information you disclosed does not, to any extent, concern serious and disclosable conduct," the tax officer wrote.

After Boyle's allegations went nowhere, he went public in a joint *Age*, *Sydney Morning Herald* and ABC

*Four Corner's* investigation.

It can be argued he played a role in many reforms the ATO is currently undergoing after the media investigation exposed an abuse of power by the organisation against small business and individuals.

Indeed, on the same day Boyle appeared in court, a new Small Business Tax Tribunal appeals body opened for business.

The body is an initiative of the federal government to make life easier for small businesses battling the ATO. Its establishment was sparked by revelations from Boyle and others in the joint media investigation.



ATO Commissioner Chris Jordan during an ATO senate estimates committee hearing at Parliament House in Canberra on May 30, 2018. Photo: Dominic Lorrimer.

Shortly after going public, Boyle was sacked. He had refused a settlement with the ATO in February because he believed his allegations were too important to be brushed under the carpet.

Days before the media investigation aired, he was raided by the Australian Federal Police and ATO, with his laptop and phone seized.

He was later charged. Almost half the 66 charges outlined in the information and summons sheet relate to telephone tapping and recording of conversations without the consent of all parties. The others relate to making a record of protected information, in some cases passing that information to a third party. The summons sheet lists ATO Commissioner Chris Jordan as the informant, which includes his signature.

For its part the ATO told me on Friday that it wouldn't comment on Boyle's case as it was before the courts but was happy its policies were up to date, having been reviewed in 2017 and there were no plans to change their approach.

Australia is littered with whistleblowers who have taken on enormous



risk for no personal gain.

We welcome home our successful sportsmen and women with ticker tape parades and shower them with accolades. But whistleblowers don't get anywhere near that treatment.

The opposition recently said if it wins government it will strengthen whistleblower protections and introduce a reward system, something that was described by the government as "wacky."

It isn't wacky, it is something that needs to be addressed — fast.

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## Whistleblower reforms now passed: what you need to know

Hopgood Ganim, 22 February 2019



HopgoodGanim

The long-awaited *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018* was passed by Parliament earlier this week. Subject to when the Bill receives royal assent, the changes will likely commence on 1 July 2019. We discuss the Bill and what it means for your business below.

### Key points

- The Bill expands the protections afforded to whistleblowers under the *Corporations Act 2001* (Cth) (Corporations Act).
- Public companies and large proprietary companies will now have to implement and publish a whistleblower policy.
- Those companies should prepare now to mitigate risk.

### Where things stand

The Bill amends the existing whistleblower regime under the Corporations Act in the following key ways.

### Who can be an "eligible whistleblower"?

The definition of eligible whistleblower has been expanded to extend to

current and former employees, officers or directors, contractors, suppliers (including their employees) or associates as well as relatives and dependants of those persons.

### What sort of things can someone "blow the whistle" about?

Previously, a whistleblower was protected for disclosures where the whistleblower had reasonable grounds to suspect the information indicated a contravention of the Corporations Act. Under the Bill, the protections have been broadened to apply to disclosures of information concerning "misconduct" or an "improper state of affairs or circumstances." This means disclosure does not necessarily have to concern illegal activity or indicate a contravention of the Corporations Act.

The requirement that a whistleblower be acting in good faith has been removed. To be protected, a whistleblower now need only satisfy the objective test that they had "reasonable grounds to suspect" wrongdoing. Most personal work related grievances are excluded from protection.

The Bill also abolishes the requirement that a whistleblower identify themselves when disclosing their concerns, meaning whistleblowers can elect to remain anonymous.

### Who can receive a disclosure?

A whistleblower can disclose their concerns to certain "eligible recipients," which include a company officer or director, senior manager, auditor, actuary, regulators (such as ASIC or APRA) and/or anyone authorised by the company to receive disclosures (e.g. Human Resources Manager).

A senior manager is a person other than a director or secretary who makes or participates in decisions that substantially affect the business of the corporation.

### Emergency disclosures

The Bill amends the concept of "emergency disclosures" to specify circumstances where whistleblowers can make protected disclosures to a member of parliament or the media.

A whistleblower can make an "emergency disclosure" to one of those recipients where they believe there is a substantial and imminent danger to the health and safety of one or more

persons or to the natural environment. A whistleblower can make a "public interest disclosure" where 90 days have passed after making a disclosure and the whistleblower still reasonably believes that:

- action has not been taken; and
- further disclosure is in the public interest.

The whistleblower must give written notice to the organisation first.



### What happens after a disclosure is made?

Understandably, this will often depend on the particular circumstances and processes in place to manage disclosures. However, as a baseline the whistleblower has the right:

- not to have their identity revealed;
- not to suffer any detriment (real or threatened) as a result of the disclosure; and
- to receive compensation for any detriment suffered.

An employer may also be liable for detrimental conduct engaged in by an employee against a whistleblower, having regard to a number of factors including whether the employer exercised due diligence (previously due diligence had been a complete defence).

### Penalties

The Bill introduces significant penalties for non-compliance and also coincides with the passing of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018*, which enhances the penalties framework under the Corporations Act.

As a result of these combined changes, the maximum penalty for contravening a civil penalty provision of the Corporations Act — such as a breach of confidentiality of a whistleblower's identity or victimisation of a whistleblower — is as follows:

- for an individual, \$1.05 million or three times the benefit derived or detriment avoided; and
- for a company, \$10.5 million,

three times the benefit derived or detriment avoided, or 10% of annual turnover (up to a maximum of 1 million penalty units).



Some new penalties were not passed

### Policing by (whistleblower) policies

Public companies and large proprietary companies are required to implement and publish a whistleblower policy dealing with the matters addressed above. In particular, a policy must include information about:

- the protections afforded to whistleblowers;
- who they can make disclosures to;
- how the company will support them and protect them from detriment;
- how the company will investigate disclosures (including fair treatment of those mentioned in disclosures); and
- how the policy will be made available to officers and employees.

### Additional changes on the horizon for listed companies

In May 2018, the ASX Corporate Governance Council (Council) issued consultation material on the 4th edition of the Corporate Governance Principles and Recommendations, which recommended that listed entities:

- have and disclose a whistleblower policy that encourages employees to come forward with concerns that the entity is not acting lawfully, ethically or in a socially responsible manner; and
- ensure the board is informed of any material concerns raised under that policy that call into question the culture of the organisation.

### Key takeaways

The changes are significant for both individuals and corporations and reflective of a shift towards encouraging a culture of accountability. Given the focus on ASIC following the banking Royal Commission, we expect a

renewed focus on non-compliance.

In advance of the likely commencement date of 1 July 2019, companies should give real consideration to adopting suitable policies and processes to receive, investigate and respond to whistleblower disclosures. It will also be necessary to carefully identify and train “senior managers” and other eligible recipients to deal with disclosures. If a whistleblower can establish they have suffered detriment as a result of a disclosure, then the onus of proof is reversed, meaning it will fall to the company in question to prove they did not cause detriment. Accordingly, the risks of failing to properly prepare should not be understated.

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## Meet Howard Wilkinson

Kohn, Kohn and Colapinto,  
<https://www.kkc.com/for-whistleblowers>

HOWARD WILKINSON is an international hero who risked his career and livelihood to stop what many experts consider to be the largest money laundering scandal in world banking history.



Howard Wilkinson

Mr Wilkinson is a former employee of Danske Bank who in 2013 confidentially raised concerns over an illegal money laundering scheme. In September of 2018, news reports on the \$234 billion scandal revealed the existence of a whistleblower but not the identity.

Mr Wilkinson had wished to remain anonymous but his identity was leaked to an Estonian newspaper.

Mr Wilkinson is represented by top whistleblower attorneys Kohn, Kohn & Colapinto, LLP (KKC). KKC have sent demands to law enforcement authorities in Estonia and Denmark to take actions to protect Howard Wilkinson from whistleblower retaliation.

The letter written by Mr Wilkinson’s attorney, Stephen M. Kohn, raised the concern that Danske Bank was behind the illegal leak of the whistleblower’s identity to an Estonian newspaper. The letter states:

“The article cited four employees of Danske Bank as sources. Mr Wilkinson was identified without his knowledge or consent. Much of the information related by the Danske employees was not accurate. We are extremely concerned that Danske Bank, which knew the whistleblower’s identity, has violated his human rights protected under law. We hereby request that your agencies take prompt action to ensure that Mr Wilkinson is not subjected to further retaliation, violations of his rights to privacy and/or his fundamental human rights.”

In a press release following the leak of Mr Wilkinson’s identity, Kohn made the following statement:

“The multi-billion-dollar money laundering scheme from Russia to Western banks was first revealed by Mr Wilkinson five years ago. His identity had remained strictly confidential throughout this time. On September 26, 2018, his identity was illegally revealed and no less than four employees of Danske Bank discussed his employment relationship with the Bank without Mr Wilkinson’s knowledge or consent. Many of these disclosures to the press were not accurate. This breach of confidentiality sends a *chilling effect* to all whistleblowers that have the courage and ethics of Mr Wilkinson. We request the Danish and Estonian authorities to take immediate corrective action and publicly commit to fully protecting Mr Wilkinson from retaliation.”

On October 23, 2018, *The Wall Street Journal* ran a feature that detailed Wilkinson’s five-year journey to bring an end to this large-scale corruption. Wilkinson testified before the Danish Parliament on November

19, 2018 and the European Parliament on November 21, 2018. His testimony before both parliaments was limited as he is bound by Danish banking secrecy laws.

“Sometimes the alarm goes off when there is a fire in the basement, which no one sees,” Mr Wilkinson said at the hearing before Denmark’s Parliament. “There was a big smoke alarm that started. But they tried actively to turn off the smoke alarm.”

For the first time the full contents of the nondisclosure agreement (NDA) restrictions placed on Mr Wilkinson as part of his severance agreement were made public.

According to statements by Danske Bank executives, these types of restrictions are common. Although difficult to confirm, we believe that Mr Wilkinson’s testimony constitutes the first time a European bank whistleblower or employee has publicly disclosed the types of contractual restrictions that hinder whistleblowing at financial institutions and often permit crimes to go undetected for years.

Mr Wilkinson was described by Danske Bank as an exemplary employee in a letter of reference provided to him when he voluntarily left working for the bank.

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## Outrage as “honour-killing” whistleblower shot dead in Pakistan

Channel NewsAsia, 9 March 2019



Rights activists in Pakistan have long fought against the patriarchal notion of “honour”, which remains prevalent across South Asia.

Photo: Anjum Naveed/AP

ISLAMABAD: Women’s rights activists on Friday (March 9) condemned the murder of a whistleblower in a notorious “honour killing” case that has shone a years-long spotlight on female victims — and the men who defend

them — in deeply patriarchal Pakistan.

Afzal Kohistani, the man who first drew attention to the infamous incident in 2012, was gunned down in Abbottabad on Wednesday, police have said.

He had pursued a case in which a local cleric ordered the deaths of male and female wedding guests shown enjoying themselves in a video.

Precise details remain shrouded in mystery but Kohistani had long been adamant that women shown in the video had been murdered.

He was shot five times on a busy road and died on the spot, Abdul Aziz Afridi, a senior police official, told AFP.

Officials said Friday that at least two arrests had been made.

“The perpetrators of this heinous crime will be brought to justice,” provincial information minister Shaukat Yousafzai told AFP.

Kohistani’s murder has ignited anger in Pakistan, where rights activists have long fought against the patriarchal notion of “honour,” which remains prevalent across South Asia.

Women have been shot, stabbed, stoned, set alight and strangled for bringing “shame” on their families for everything from refusing marriage proposals to wedding the “wrong” man and helping friends elope.

Men can be victims too, though it is rarer.

“Will be raising this shocking murder of Afzal Kohistani in parliament,” opposition leader Sherry Rehman tweeted.

Rights activists participating in a march to mark International Women’s Day on Friday condemned Kohistani’s shooting.

“This incident has brought to the focus, once again, how vulnerable those that raise their voice still are,” said Benazir Jatoi, a human rights lawyer and march organiser.

Witness protection was “almost non-existent,” she added.

“Today’s march in Islamabad will remember Afzal and other brave Pakistanis like him and we will that perpetrators be held accountable,” said Jatoi.

The independent Human Rights Commission of Pakistan (HRCP) said it was concerned the killing would “have a ripple effect on human rights defenders who monitor and report

‘honour’ killings and are reminded of what their work could cost them.”

### Wedding video

The wedding video emerged in 2012, showing women clapping as two men danced in the deeply conservative mountainous area of Kohistan, 175 kilometres north of the capital Islamabad.

The men and women had allegedly been in the room together, in defiance of strict tribal customs that separate men and women at weddings — though the video does not show them together.

A local cleric sentenced several women and men to death over the video.

Kohistani is believed to have been related to some of the men in the video. His entire family were banished from Kohistan as a result.

He took the rare step of pushing the case before the media and the justice system. The Supreme Court launched a commission to investigate — but in June 2012 was told the women had never been murdered at all.

A fact-finding team met women who were purportedly those shown in the video and said they were alive.

But Kohistani insisted that the women shown to the fact-finding officials were different women, and that the death sentences had been carried out.

Three more men — Kohistani’s brothers — were later killed by a rival family. A Pakistani court convicted six of their killers in 2014.

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## Value of the False Claims Act

Tinker Ready

Whistleblower Protection Blog

1 March 2019

The False Claims Act (FCA) has long served as a powerful weapon against fraud and waste in US government programs, from rancid Civil War rations to Medicare scams. The Department of Justice (DOJ) recovered \$2.88 billion under the law last year, with whistleblowers involved in the majority of cases.



March 2 marks the anniversary of the law, which was signed in 1863 by President Abraham Lincoln. After the Civil War, the FCA continued to identify military contractors guilty of mismanagement and fraud. With rising health costs, much of it covered by Medicare, most cases now involve medical providers and suppliers. The DOJ's December report noted that \$2.5 of the \$2.8 billion in recovery involved the health care industry. The first line of a story in the trade publication *Modern Healthcare* reports "Health-care industry groups have always hated False Claims Act whistleblower lawsuits."

The law's *qui tam* provision allows those with evidence of fraud to sue on behalf of the federal government. In these cases, the whistleblowers often expose crimes the government may have never detected. Qui tam cases accounted for more than \$2.1 billion of the \$2.8 billion collected in fiscal year 2018. More than \$300 million of that went to whistleblowers.

### Challenges

Despite the high numbers, the False Claims Act faces challenges. Here are a few of them.

- Last year's recoveries were high, but they were the lowest since 2008.
- Attorney General William Barr has not been a supporter of the False Claims Act in the past. In 2001, he called it an abomination and described whistleblowers as "bounty hunters." However, during his confirmation hearings, he promised to "diligently uphold" the law. Under questioning, Barr said the constitutionality of the law has been upheld by the Supreme Court.
- Whistleblowers still pay a steep price for coming forward. The *New Yorker* ran a long story in February on the personal toll of pursuing a qui tam case. "Institutional denial, obfuscation, and

retaliation are hallmarks of many whistle-blowing cases," wrote Sheelah Kolhatkar

- A case before the Supreme Court, *Cochise Consultancy, Inc. v. United States*, could narrow the window for action on qui tam cases. The case will decide when the statute of limitations clock start running in a False Claims Act case when the government declines to intervene.
- The DOJ in January moved to dismiss 11 qui tam suits filed by Health Choice Group, which DOJ describes as a "shell company" controlled by "investors and former Wall Street investment bankers."

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## Former Pentagon employee, called "America's best-known whistleblower," dies at 92

Harrison Smith

*Washington Post*, 8 February 2019

A. ERNEST FITZGERALD, a Pentagon official tasked with analyzing project expenses, was summoned to Capitol Hill in 1968 to discuss a new fleet of Lockheed C-5A transport planes before the Joint Economic Committee.

He had been instructed to play dumb about the cost. He did not.

Under oath, he said the C-5A was \$2 billion over budget. In testifying, Fitzgerald later said, he was merely "committing truth."

The revelation about the vast cost overruns made national headlines, stunning members of Congress as well as Fitzgerald's superiors. Back at the Pentagon, he was met with a blunt question from his secretary: "Have you been fired yet?"

Fitzgerald lasted another two years in his position before President Richard Nixon ordered his dismissal. He went on to sue Nixon, an action that resulted in a landmark U.S. Supreme Court case on presidential immunity and helped make him "America's best-known whistleblower," *The Washington Post* wrote in 1987.



A. Ernest Fitzgerald

Through his more than 50 subsequent appearances on Capitol Hill, said Danielle Brian, executive director of the Project on Government Oversight (POGO), Fitzgerald all but single-handedly "created the concept of Pentagon waste and fraud. People didn't even think about it. And now they very much understand it is happening," even as policymakers have failed "to listen to his message," she said.

Fitzgerald, alternately dubbed "the patron saint of government whistleblowers" and "the most hated man in the Air Force," was 92 when he died January 31, exactly 46 years after Nixon's Oval Office taping system recorded the president discussing Fitzgerald's ouster.

"This guy that was fired," he told aide Charles Colson, "I'd marked it in the news summary. That's how that happened. I said get rid of that son of a b----."

"The point was not that he was complaining about the overruns," Nixon said in a separate conversation that day, "but that he was doing it in public. ... And not, and frankly, not taking orders."

The transcripts were made public as part of Fitzgerald's effort to win \$3.5 million in damages from Nixon and three of his aides — the final chapter in a legal saga that began soon after his C-5A testimony, when the Air Force inundated him with busy work, investigated his private life and launched a smear campaign against him, according to court documents.

In 1970, he was laid off from his position as a senior financial management specialist; he was told that it was part of a general staff reduction. Fitzgerald fought the dismissal with a lawsuit, and in 1973 the Civil Service Commission took his side, ordering his reinstatement with about \$80,000 in back pay.

But while his job title was the same, the work was not.

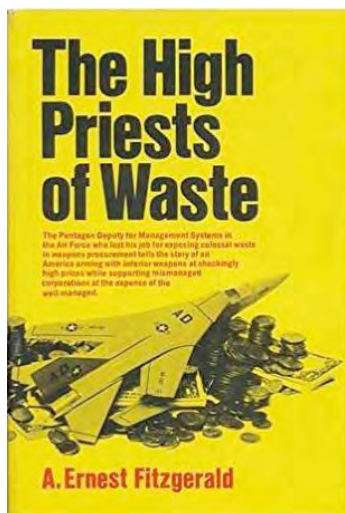
"I'm completely excluded from the big weapons systems jobs," Fitzgerald told *The Post*. "They keep me out of Boeing's and Lockheed's hair and all the big ones." He was instead ordered to examine maintenance depots. As his daughter Nancy Fitzgerald-Greene said in an interview, the Air Force "put him in charge of inspecting bowling alleys in Thailand."

In 1974, Fitzgerald sued again, this time targeting Nixon, in an action that went to the Supreme Court. In 1982, the justices ruled 5 to 4 that the president was "entitled to absolute immunity," with Justice Lewis Powell explaining that "because of the singular importance of the president's duties, diversion of his energies by concern with private lawsuits would raise unique risks to the effective functioning of government."

By then, however, Fitzgerald had won a victory of sorts: One year earlier, Nixon had secretly paid him \$144,000 to keep the case from going to trial. Previously, *Newsweek* reported, the former president had offered to contact President Jimmy Carter to see whether he might be able to arrange Fitzgerald's appointment to director of the Office of Management and Budget.

The Pentagon, however, remained Fitzgerald's home for decades. Poring over contracts and financial records, he testified dozens of times before Congress and forged close relationships with leaders of both parties. In a remembrance to Fitzgerald given Wednesday on the Senate floor, Senator Charles Grassley, called him "a tenacious watchdog ... a hero for taxpayers and a warrior against waste."

Years earlier, Senator William Proxmire told *People* magazine that Fitzgerald was "one of the very few people in government who has made a difference."



In the early 1980s, as part of his battle against Pentagon waste and inefficiency, Fitzgerald developed the idea for the Project on Military Procurement, which evolved into POGO. The organization was designed to build on the findings of Pentagon insiders such as Fitzgerald, who uncovered inflated costs as well as evidence of falsified weapons tests, in which defense contractors were "cutting corners to get things out into the field," Brian said.

Fitzgerald, who retired in 2006, also devised a novel strategy for explaining the extent of wasteful spending in the military, which he once estimated at \$30 billion each year.

"An average person cannot relate to the overpricing of an airplane like the F-15 fighter or B-1 bomber or an M-1 tank, so first, we have to explain how the Pentagon's overpricing scam works in terms of things they are familiar with, like toilet seats, hammers, screws, ash trays, etc.," he said, according to a tribute by fellow military analyst Franklin C. "Chuck" Spinney.

"Then, step 2 is simply to explain how an F-15 or B-1 bomber or M-1 is simply a bundle of overpriced spare parts flying in close formation."

Among Fitzgerald's findings: A plastic stool-leg cap that cost 34 cents, but was billed at \$916.55; labor for a Boeing cruise missile, estimated at \$14 an hour but paid at \$114; and a six-inch airplane maintenance tool that, inexplicably, cost \$11,492.

Separately, railing against unnecessary spending on large-scale defense projects, he cited a maxim he dubbed Fitzgerald's First Law: "There are only two phases of a program. The first is,

'It's too early to tell.' The second: 'It's too late to stop.'"

The older of two children, Arthur Ernest Fitzgerald was born in Birmingham, Alabama, on July 31, 1926. His father was a patternmaker, and his mother ran a small farm.

Fitzgerald served in the Navy during World War II and received a bachelor's degree from the University of Alabama in 1951. He worked in the aerospace industry and formed a consulting firm before joining the Air Force as a civilian in 1965.

By then he had developed a specialty, cost-cutting, that helped him earn a nomination for the Defense Department's Distinguished Civilian Service Award. But the praise stopped flowing after the C-5A hearings, and during the years he was out of work, he and his family "went to the rice and beans diet a lot," Fitzgerald-Greene said.

While Fitzgerald had some success in renegotiating Air Force contracts and eliminating inefficiencies, he said his efforts to spur broader changes were repeatedly blocked. He recalled Air Force General John "Zeke" Zoekler once telling him that "inefficiency is national policy."

"Some of the Pentagon scams we once deplored are viewed as virtues," Fitzgerald said in 1996, in a mournful acceptance speech for the Paul Douglas Ethics in Government Award.

"The unit costs of defense are scandalously high, and going up. Porking-up contracts for political purposes, always present, but formerly stoutly denied, is now a good thing. It makes good jobs."

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## 2018 — year of the Church whistleblower

Joan Frawley Desmond  
*National Catholic Register*  
31 December 2018

ON OCTOBER 19, the Feast of the North American Martyrs, Archbishop Carlo Maria Viganò issued his third "testimony" taking aim at an alleged Vatican cover up of sexual misconduct by Archbishop Theodore McCarrick.

The date of Archbishop Viganò's latest letter underscored his assessment of the damage that clerical predators,

aided by a powerful homosexual subculture, have wreaked on the lives of their victims and on the moral credibility of the Church.



Carlo Maria Viganò

In his closing remarks, the former nuncio to the United States appealed to those who could verify his claims, “or who have access to documents that can put the matter beyond doubt,” to come clean.

“You can ... prop up the conspiracy of silence,” he said, or “you can choose to speak. You can trust Him who told us, ‘the truth will set you free.’”

Archbishop Viganò’s accusations against high-ranking Vatican officials are unprecedented in modern Church history. But even as he has earned a scathing rebuke from Cardinal Marc Ouellet, the prefect of the Congregation for the Bishops, his critique prompted the president of the U.S. Conference of Catholic Bishops to call for a full investigation into the former nuncio’s claims, and Catholics angered by the McCarrick scandal endorsed this plan.

In November, during a rally outside the Baltimore hotel where the U.S. bishops met to debate and vote on abuse reforms during their annual fall assembly, protesters celebrated Archbishop Viganò’s decision to “speak,” repeatedly chanting his last name as a sign of their support for the prelate.

“Archbishop Viganò has played a very important role,” because he pointed to “the most probable explanation for the scandal: the presence of a homosexual network within the hierarchy, reaching up to the Vatican,” Philip Lawler, the author of two books about how clergy sexual abuse has injured the Church, told the *Register*.

But Archbishop Viganò is not the only Church whistleblower to draw headlines in a watershed year that

featured incendiary allegations by victim-survivors and chancery staffers, seminary students, professors and psychologists that resulted in high-profile seminary investigations, and resignations by cardinals and bishops for alleged abuse or negligence.

### Risk assessment

Just days before the close of the year, the Vatican received the testimony of another man, James Grein, who claimed that Archbishop McCarrick began abusing him when he was just 11, in the late 1970s, and continued to do so for 18 years. Grein’s December 27 deposition also alleged that Archbishop McCarrick assaulted him in the confessional. His searing account will be used in a Vatican trial or administrative penal process that could lead to McCarrick’s laicization.

The whistleblowers behind such shocking disclosures, said Lawler, “are guided by different motivations.” But those who have the most to lose — for example, a seasoned Vatican diplomat like Archbishop Viganò — also provide the most credible and compelling testimony.

The consistent theme in many of their stories is that they had pressed for action through approved channels before going public. Those who made such a fateful decision risked retribution, however, and would-be whistleblowers who have contacted the *Register* over the past year expressed fears that their ministry in the Church would be curtailed if they were known to be the source for new allegations.

“There is hardly any provision in the Church to protect them, even though they are acting on behalf of the Church as well as victims,” said Terry McKiernan, who leads the watchdog group, Bishop Accountability, which has posted an online list of whistleblowers, including diocesan and religious order priests, and women religious.

The U.S. bishops have announced plans for a new reporting mechanism that will allow whistleblowers to report sexual misconduct without fear of retaliation. But, in past years and still today, many have worried that such disclosures will make it “impossible to do the work they were born to do,” McKiernan told the *Register*.

### South American shakeup

In early 2018, one of the most prominent whistleblowers to shake up the Church was Juan Carlos Cruz, one of the Chilean victims of the notorious former Father Ferdinand Karadima. The priest was allegedly shielded by powerful Church leaders, including Bishop Juan Barros, whose appointment as ordinary of the Diocese of Osorno, Chile, sparked protests that overshadowed the Pope Francis’ January 2018 visit to the South American nation.

In short order, the Holy Father was obliged to launch an apostolic investigation that verified the victims’ claims, and then released a public apology to Cruz and other victim survivors. By June, all of Chile’s bishops had tendered their resignations en masse, with eight of them accepted to date.

Meanwhile, in Honduras, students at Tegucigalpa’s major seminary helped secure the resignation in July of Auxiliary Bishop Jose Juan Pineda Fasquelle, following accusations that he engaged in sexual misconduct with seminarians, and additional claims that a homosexual subculture had become entrenched in the seminary. Francis accepted Bishop Pineda’s resignation in July.

### McCarrick: turning point?

By summer, however, the shocking news that Archbishop McCarrick had faced previous accusations of sexual misconduct with seminarians, but remained in public ministry and even rose through the Church hierarchy to become a cardinal, marked a new, and possibly decisive chapter in the U.S. clergy abuse crisis.

As many Catholics raised questions about the Vatican’s failure to act on reports of McCarrick’s misconduct, media outlets spotlighted the efforts of two unsung whistleblowers: Richard Sipe and Father Boniface Ramsey.

A former Benedictine who left the priesthood, Sipe was a leading advocate for victims, and a psychotherapist who specialized in priestly celibacy and sexual problems and once served in a number of seminaries. He died in August.

“In the ’80s, Richard had seminarians telling him that McCarrick always wanted one of them to sleep with him,” Marianne Benkert, Sipe’s widow and

collaborator, told the *Register*, during a telephone interview from her home in La Jolla, California.

“He wrote to the Vatican about this, and never got any answers.” When Sipe “tried to get McCarrick’s victims to come forward publicly, they said they couldn’t,” she reported, noting their fears of reprisals.

Later, Sipe used his website to post information about McCarrick’s misconduct with seminarians and priests under his authority, including a graphic account culled from a financial settlement.

In 2016, two years before McCarrick was finally removed from public ministry, Sipe wrote a letter to Bishop Robert McElroy of San Diego that offered a prescient glimpse of the fresh scandals to come.

“When men in authority — cardinals, bishops, rectors, abbots, confessors, professors — are having or have had an unacknowledged-secret-active-sex-life under the guise of celibacy, an atmosphere of tolerance of behaviors within the system is made operative,” warned Sipe.

### Seton Hall witness

That specific problem was a source of deep concern for Father Boniface Ramsey, a New York priest who previously served on the faculty of the Immaculate Conception seminary at Seton Hall University in New Jersey from 1986-1996.

During his years at Immaculate Conception, Father Ramsey said he witnessed a seminarian engage in behavior that “seemed to involve sexual abuse, homosexual abuse.”

In an interview with the *Register* earlier this year, he described his successful effort to expel the student, whose actions he judged to be “irredeemable.”

But after the student’s expulsion, “McCarrick fired me from the voting faculty, because the person I [helped to expel] was one of ‘his’ seminarians,” said Father Ramsey. “McCarrick didn’t like that.”

In 2000, Father Ramsey shared his concerns in a letter to the U.S. nuncio, Archbishop Gabriel Montalvo, but never received a formal reply. In 2015, he wrote Cardinal Sean O’Malley, the president of the Pontifical Commission for the Protection of Young People,

and received a letter from the Boston archbishop’s secretary, who explained that he had no authority to address the priest’s concerns.

After Archbishop Viganò’s testimony confirmed that Vatican officials had received Father Ramsey’s 2000 letter, the priest said he has received a steady stream of phone calls from New Jersey clerics and others who have been overwhelmed by the ongoing revelations.

“Virtually every day someone calls me,” he told the *Register* in December. “They want to be reassured that there is somebody out there, especially a member of the clergy, who will blow the whistle.”

He said that people usually congratulate him “for my ‘courage,’ but it was anger and dismay that propelled me.”

### Buffalo revelations

In August, just weeks after Archbishop Viganò released his first bombshell testimony, another whistleblower surfaced in the Diocese of Buffalo, New York.

Siobhan O’Connor, a former executive assistant to Bishop Richard Malone of Buffalo, told *60 Minutes* that she provided diocesan personnel files to a local reporter because of the local Church’s alleged failure to provide a complete account of priests facing credible accusations of abuse involving minors, when it posted a list of 42 names in March.

The resulting news reports focused on two priests who remained in active ministry as late as March 2018. Both of them had been vetted for inclusion in the public list of accused priests, but were not added to that list in the end.

During an interview with the *Register*, O’Connor said that after the diocese launched an independent reconciliation program for victim survivors, there was an influx of calls, and she handled some of them.

“I discovered the scope and traumatic nature of the abuse,” she said.

Over time, she also came to believe that “the bishop was not taking proper action with regard to one priest’s case.”

O’Connor had repeatedly pressed him to begin a recommended review of the matter, but it was put off until the threat of investigation by law enforcement or the media moved things

forward.

“As a lifelong faithful Catholic, I would never have thought about going to the media about my bishop or diocese, but I saw there was no internal impetus to change,” she said.

Bishop Malone has defended the diocese’s efforts to provide a complete list of accused priests.

O’Connor accepted a new job before the leaked documents she provided made headlines. A single woman with no children, she believes that she was in a better position to take action than most would-be whistleblowers.

“I was the right person at the right time,” she said, and credited Archbishop Viganò as a source of inspiration.

### Agonizing decisions

The former nuncio had described the decision to break his silence as the fruit of an agonizing examination of conscience, and a consuming fear that he would be harshly judged by God for failing to do his duty.

Archbishop Viganò “was speaking as someone in his later years,” said O’Connor. “But even at 35 I realized I couldn’t walk away. There is a great peace of soul that comes when you do this.”

The establishment of new independent mechanisms for reporting abuse will increase the likelihood that more people with critical information will come forward in the months ahead. Likewise, the ongoing investigation of Archbishop McCarrick’s record in the four dioceses where he previously served may bring other whistleblowers out of the shadows, even as it is expected to provide the names of high-ranking Church leaders who tolerated his misbehavior.

For now, 2018 is the Year of the Whistleblower. In hindsight, the full impact of this extraordinary moment will be understood more clearly. Will it be dismissed as a lost opportunity to end the “conspiracy of silence” shielding predatory clerics, or the start of a seismic shift in how the Church addresses the scandal across the globe?

Joan Frawley Desmond is a *Register* senior editor.

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### Whistle

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## Sightings

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During an expedition to a remote region, explorers discovered remains of what seemed to be a large sculpture. Their careful investigations led to the conclusion that this was a monument to the silent whistleblower, erected by a previous civilisation.

Unfortunately, by the time the value of whistleblowing was recognised, the civilisation was already so mired in corruption and environmental destruction that its demise was inevitable. The visible portion of the monument provides a useful reminder of the importance of heeding whistleblower warnings before it is too late.



For more information, see <https://charismaticplanet.com/hand-desert-chile/>

## 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 Coolum Beach BSB 084 620 Account Number 69841 4626. Reference your surname.
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.

New members: [http://www.bmartin.cc/dissent/contacts/au\\_wba/membership.html](http://www.bmartin.cc/dissent/contacts/au_wba/membership.html)