

AUSTRALIA: WHISTLEBLOWERS AUSTRALIA

By Brian Martin¹

In 1973, Bill Toomer was simply doing his job. As quarantine officer at Fremantle, Western Australia, he inspected a ship and ordered it fumigated. This was an expensive operation, unwelcome by some ship owners who had cosy relationships with their regulators. Toomer came under fierce and sustained attack. He lost his job, his family broke up and he ended up destitute and in bad health.

When Toomer first came under attack, the idea of whistleblowing was unfamiliar in Australia. Lots of people thought he had been unjustly treated, but there was no organised network to provide support.

This only changed from 1991 with the setting up of Whistleblowers Australia (WBA), a national organisation whose goal is to promote a society in which it is possible to speak out without reprisal about corruption, dangers to the public and environment and other vital issues, and to help those who speak out in this way to help themselves.

From the start, WBA has been based entirely on volunteers. We have not sought funding from governments, corporations or wealthy individuals. Most of our income comes from \$25 annual membership fees. With 200 or so members, that gives an annual budget of less than \$10 000. One advantage of relying on volunteers is that everyone who contributes does so because they want to. Another is that there is less temptation to pass all the work to overloaded paid workers. Instead, we're all overloaded!

That's because most members are themselves whistleblowers. Members are not required to be whistleblowers, but that's who gravitates to the group.

Probably the most important function of WBA is to put whistleblowers in touch with each other. Many never set out to blow the whistle but just were doing their jobs, for example by reporting a problem about finances to their boss. Having inadvertently touched a symptom of a deeper problem, they suddenly found themselves under attack.

In the state of New South Wales, which has the largest and most active branch, there are weekly "caring and sharing" meetings that give whistleblowers

an opportunity to tell their stories and obtain support and advice from others. Often it is an immense relief to talk to others who have had similar experiences and to find that the problem lies with complacent or corrupt organisations and not with themselves. In other states, meetings are less frequent but there is considerable person-to-person contact.

Whistleblowers typically hear about WBA through a friend, a newspaper article, radio interview or the Internet. Tracking us down through the telephone directory or the Internet, they may phone or email one of our national committee members or regional contacts. Experienced members provide advice over the telephone, send leaflets and articles by post and sometimes give ongoing support through difficult cases.

Members of WBA include police, teachers, public servants, corporate employees, charity workers, doctors, researchers, church employees and concerned citizens. The word "former" should be attached in many cases because so many have left or lost their jobs. These individuals have raised concerns about corporate fraud, inside appointments, unsafe products, drug deals, protection of criminals, hazardous work practices, lying about government policy, environmental risks, plagiarism, sexual crimes and frame-ups, among other issues.

It is an indictment of social institutions that an organisation like WBA is necessary. After all, if grievance procedures, appeal bodies and the courts could deal with such problems, there would be no need for whistleblowers to band together. Unfortunately, the most common experience of Australian whistleblowers is that formal channels don't help. Many have tried a sequence of channels, from their employer's grievance procedures to an ombudsman, auditor-general, parliamentarian or court. Usually, none of these work. For example, in a court case about unfair dismissal, the employer is able to spend lots of time and money appealing unfavourable decisions while restricting the focus to narrow legal issues. Many whistleblowers spend their life savings and years of effort fighting a case. Meanwhile, the original problem remains unaddressed. Australian researcher William De Maria, in a pathbreaking study, found that whistleblowers reported being helped by formal channels in fewer than one out of ten cases.

Almost all members of WBA who have approached the Independent Commission Against Corruption in New South Wales have been disappointed with its performance and would not recommend that any whistleblower take a complaint there. Similarly, many members of the Whistleblowers Action Group in Queensland – which works closely with WBA – have been extremely disappointed with the performance of the Criminal Justice Commission in that state.

¹ Jean Lennane, national president of Whistleblowers Australia, offered useful comments to the author.

Whistleblower legislation is often touted as protection for those who speak out, but its performance falls far short of its promise. There are a number of whistleblower acts in Australian states and territories, but it is hard to find any whistleblowers who have benefited from them. Although reprisals against whistleblowers are commonplace, not a single employer has ever been prosecuted for such reprisals under any of the acts.

At best, whistleblower legislation signals government support for public interest disclosures and protects a minority of those who make them. More commonly, it channels complaints to dead-end official bodies, giving an illusion of protection while actually nothing changes. Worse still, complainants trying to enforce their rights under the law can have ruinous costs awarded against them, as happened to the only whistleblower yet to try for the “protection” offered by the New South Wales Protected Disclosures Act.

Rather than trying to protect whistleblowers after they suffer reprisals, another approach is to promote a culture of dissent. One WBA campaign was to remove legal restraints on free speech by government employees. WBA worked with trade unions and liaised with Freedom to Care, a kindred whistleblower group in Britain, to bring about an amendment to the International Labour Organisation’s convention 111 in order to prohibit discrimination on the basis of making a public interest disclosure.

Australia’s defamation laws are draconian, and many whistleblowers are threatened with defamation actions. WBA produced a detailed leaflet on defamation, outlining a number of options for avoiding or challenging the use of defamation law to inhibit free speech.

In New South Wales, many teachers and government employees reported being dismissed after being declared mentally unfit by psychiatrists of a referral body called HealthQuest. WBA branch members collected data, organised media coverage and held rallies outside HealthQuest offices, eventually stimulating a revision of procedures.

WBA set up a formal procedure for assessing nominated whistleblowing cases and declaring individuals to be “Whistleblowers of National Significance,” with five individuals so far being so honoured, one of them Bill Toomer. Each case is used to illustrate specific shortcomings in official methods for dealing with public interest disclosures.

Holding together an organisation made up largely of whistleblowers is not easy. Few members have much in common with each other except the whistleblowing experience. Many are highly traumatised, have been let down by organisations and individuals. They often have high expectations of obtaining support, expectations that cannot always be met. WBA has gone through some tense internal battles but we have survived. That is quite an achievement in itself.

Because so many members have their own cases, that leaves relatively few with the energy and experience to advise and support others. Across the country, there are perhaps a couple of dozen individuals who do most of the work: handling queries, organising and running meetings, making submissions and producing materials. Given that WBA might be contacted by several new whistleblowers every week, each with a challenging and complex case, there is no possible way that advocacy can be provided to all comers. Therefore, WBA has a policy of not formally supporting individuals in their whistleblowing cases. Instead, we encourage self-help and mutual support. That means that our primary activities are providing information, offering advice, and putting people in touch with each other.

One thing that does not work very well is to try to decide whether someone is really a whistleblower before providing advice, support or membership. This puts members in the role of judges of newcomers, sometimes leading to further hurt. Promising to offer support to genuine whistleblowers also causes problems, because the demand for individual advocacy far outstrips our capacity to provide it. The New South Wales branch has been highly successful in adopting a policy of welcoming anyone who wants to come along to a meeting. Some who have attended over the years were not whistleblowers but instead better described as disruptive employees or even criminals. Such individuals seldom find what they are after and drop out of WBA. The advantages of a non-judgemental atmosphere outweigh occasionally having to deal with awkward non-whistleblowers. After all, some whistleblowers are awkward too.

Changes in the culture of organisations and society are definitely necessary, since it is amazingly difficult for a whistleblower to obtain vindication through formal channels. In Bill Toomer’s case, there have been some 11 inquiries into the affair over two decades, at vast expense to the government and of course Toomer himself. WBA stalwart Keith Potter continues to pursue justice for Toomer, requesting that the federal government formally exonerate Toomer of charges against him and make a compensation payment, as has been recommended more than once by government officials in the long-running saga. But the government continues to stall and resist action.

In contrast to official channels, the media are often extremely helpful, reporting on the whistleblower’s plight as well as the issues about which they raised concerns. The media and whistleblowers have a common interest in bringing issues into the open for public scrutiny and in resisting attempts to squash free speech. A number of experienced WBA members have concluded that the two things most helpful to whistleblowers are publicity and talking to other whistleblowers. As well as local meetings and a network of contacts, WBA has regular conferences, a phone number for leaving messages

and two websites (<http://www.whistleblowers.org.au> and <http://www.uow.edu.au/arts/sts/bmartin/dissent/>).

WBA is part of an informal network of groups and individuals promoting a more open and honest society, including a number of journalists, lawyers, researchers, trade unions and free speech organisations. WBA on its own can't solve the problems of individual whistleblowers but it can be part of a process by which more and more people learn the skills to act effectively against social problems.

In honour of Satyendra Dubey.

Richard Calland dedicates this book to men and women everywhere who speak out against injustice whenever they find it.

Guy Dehn dedicates this book to his parents.

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