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Abstract | Speaking out in the public interest—being a whistleblower—can be risky. Media reports and public inquiries into allegations of misconduct in the public and private sectors regularly recount the negative consequences that those who make reports in the public interest have experienced—despite the presence of legislation that seeks to prevent reprisals and retaliation for disclosing misconduct. Instances in which whistleblowers have lost employment and careers, suffered harassment and intimidation, and experienced threats or acts of violence continue to occur in Australia.

This study sought to understand the nature of victimisation experienced by whistleblowers who had reported or attempted to report wrongdoing in their workplace. Information was obtained from in-depth interviews with 36 whistleblowers and 21 people who dealt with their reports in public and private sector organisations. The results confirm the nature of the harms that almost all whistleblowers experience as a consequence of reporting misconduct. The paper concludes by identifying ways in which whistleblowers could better be protected from victimisation and how the procedures and safeguards involved in the whistleblowing process could be strengthened.

Understanding and responding to victimisation of whistleblowers

Inez Dussuyer and Russell G Smith

The importance of whistleblowing in uncovering misconduct cannot be emphasised too much. Without the initiative of whistleblowers, much serious misconduct would remain undetected and would continue. As Kennedy (2004) observed:

It has been said that...secrecy is no longer acceptable; too many lives and livelihoods have been lost or destroyed because a whistle could not be blown. But too often the voice of the honest worker or citizen has been drowned out by the abusive, unaccountable bosses. Invariably, staying silent was the only option. Creating a safe alternative to silence represents a difficult challenge, legally and culturally; separating the message from the messenger is still obstructed by vested interests; deeply ingrained sociological habits and attitudes, and by the limitations of the law (Kennedy 2004: 1).

It is of critical importance for whistleblowers to come forward and to speak out, but there should also be ways to report misconduct that do not leave individuals feeling concerned and fearful of the consequences of doing so. This study sought to understand the nature of the victimisation experiences of whistleblowers who have reported, or attempted to report, wrongdoing in their workplace.

In a similar manner to some other research into whistleblowing (Alford 2001; De Maria 1999; Lennane 2012), this study investigated what was done and what happened to whistleblowers after wrongdoing had been reported—including acts of retaliation, reprisals and other forms of detrimental action. This study did not seek to determine the prevalence of victimisation, although the experiences disclosed indicate the seriousness of the problem in Australia at present. The report concludes by identifying ways in which whistleblowers could better be protected from victimisation and how the procedures and safeguards involved in the whistleblowing process could be strengthened.

Aims and concepts

This study had three primary aims:

- to identify the nature of retaliation experienced by whistleblowers who disclosed, or who attempted or threatened to disclose actual or suspected illegal behaviour, misconduct, or other forms of wrongdoing (generically referred to as ‘behaviour’);
- to determine the nature of the factors associated with the retaliation experienced; and
- to identify ways in which retaliation could have been avoided and how whistleblowers can best be protected from victimisation.

At the outset, it is important to understand the meaning of the key terms and concepts used in the study.

The term ‘whistleblower’ was used, despite some sectors now preferring less emotive expressions such as ‘public interest discloser’ or ‘complainant’. It was decided to retain the use of the term whistleblower in view of its popular acceptance in the academic and policy literature.

A whistleblower is a person who has discovered actual or suspected illegal behaviour, misconduct, or other forms of wrongdoing and discloses information about the discovery in the public interest.

The generic term ‘misconduct’ was used to describe the various forms of illegal behaviour, misconduct, or other forms of wrongdoing disclosed. The misconduct discovered may have occurred within the public or private sectors, but would not amount to whistleblowing if it related solely to private or domestic settings.

Disclosures may be made within organisations, to external reporting entities, to the media or online. Disclosures may also be made in confidence, anonymously, or using the whistleblower’s actual name or identity.

‘Disclosure recipient’ refers to those who received and coordinated disclosures from whistleblowers. ‘Disclosure coordinators’ are officers in the public sector who manage whistleblowing and protected disclosures.

Victimisation is a generic category for all negative consequences experienced as a result of whistleblowing. Retaliation for disclosure includes acts or omissions directed at the whistleblower or the whistleblower’s family, associates or interests, and can involve threats, acts, omissions or other forms of detrimental action or negative treatment. The retaliation must be in response to the disclosure, rather than in response to other conduct unrelated to the disclosure. Retaliation may take place at any time following the disclosure.

In order to understand the context in which retaliation occurred, the study obtained information on the misconduct that led to the disclosure as well as the situation of the whistleblower within the organisation at the time the misconduct was discovered, the avenues and procedures for disclosure that were available and made use of, and the reasons why retaliation occurred. Most of this material is presented in the accompanying report (Dussuyer et al. forthcoming). The present paper deals primarily with the types of retaliation that occurred and the general impact that whistleblowing had on the whistleblower. Finally, the question of how the observed retaliation could have been prevented is examined.

Research participants

Interviews were undertaken with two groups of participants: those who had undertaken whistleblowing in the past, and those who received and coordinated disclosures from whistleblowers, referred to as disclosure recipients (DR).

Whistleblowers were sourced from two organisations: STOPline (STL), a provider of confidential, anonymous hotlines for reporting misconduct; and Whistleblowers Australia (WBA), an association for those who have exposed corruption or any form of malpractice, especially if they were hindered or abused, and for those who are thinking of exposing it or who wish to support those who are doing so.

Each organisation was asked to provide potential interviewees with a letter of request, which had been approved by Victoria University's Human Research Ethics Committee (HREC No. 0000023639). The letter asked willing individuals to make contact with the researcher in order to arrange a time for interview. Details of the whistleblower participants are shown in Table 1.

| | STOPline | Whistleblowers Australia ^a | Total |
|----------------|----------|---------------------------------------|-------|
| Men | 4 | 16 | 20 |
| Women | 8 | 8 | 16 |
| Total | 12 | 24 | 36 |
| Public sector | 5 | 6 | 11 |
| Private sector | 7 | 18 | 25 |
| Total | 12 | 24 | 36 |

a: Includes one interview with two colleagues regarding the same matter together
Source: VU-AIC data 2016.

The age of those interviewed ranged from 30s to 70s at the time of interview and participants resided principally in Victoria, New South Wales and Queensland, with a minority in the other states.

Both organisations contacted large numbers of whistleblowers, but relatively few agreed to participate and arrange a time for interview. STOPline, for example, held a database of 500 individuals, half of whose contact details were invalid or inactive. The remaining 250 individuals were sent messages, but only 19 responded and only 11 agreed to be interviewed, while a twelfth person

provided a response in writing. In the case of WBA, 36 responded but only 19 were interviewed (four others provided written responses, and in one other case two colleagues were interviewed concerning the same matter). This raises the likelihood that those who participated in interviews were not representative of whistleblowers generally, and, arguably, could mean those with more serious experiences of victimisation were over-represented. In addition, it was not possible to test the veracity of whistleblowers' accounts of what had transpired, although disclosure recipients often identified similar concerns to those raised by whistleblowers. As indicated above, the present study was not designed to assess the prevalence of victimisation, just the nature of the experiences of those who were willing to participate.

In addition to conducting interviews with whistleblowers, the views of those to whom disclosures are made were also canvassed in order to obtain an alternative perspective on acts of reprisal and retaliation experienced by whistleblowers. Interviewees came from staff of independent hotlines, integrity bodies with roles in whistleblowing processes, including investigators, public sector disclosure coordinators as well as persons from the private sector with a role in handling whistleblower reports. These interviewees were sourced principally with the assistance of STL and WBA, who sent email invitations to potential participants that they knew in relevant organisations. Again, interested individuals were asked to contact the researcher to arrange a time for interview. Twenty-one semi-structured interviews were conducted with six women and 15 men, as indicated in Table 2.

Some of those who dealt with whistleblower reports had extensive experience, on occasions having spoken with more than 1,000 whistleblowers each. Some had backgrounds in law enforcement while others held senior management and compliance positions.

| Source | Men | Women | Total |
|--|-----------|----------|-----------|
| Ombudsman | 4 | 0 | 4 |
| Public sector disclosure coordinators | 4 | 4 | 8 |
| Private sector disclosure coordinators | 4 | 1 | 5 |
| Hotline/support line staff | 3 | 1 | 4 |
| Total | 15 | 6 | 21 |

Source: VU-AIC data 2016

Eleven disclosure recipient interviews were conducted face-to-face in Victoria (52%), with the remainder by telephone. In two cases face-to-face interviews were supplemented by telephone interviews as well. Interviews generally lasted between 30 and 60 minutes and a handwritten record was taken as most preferred not to have their interviews recorded electronically.

In reporting extracts of interviews, quotes will be referenced as 'STL' for whistleblowers sourced from STOPline, 'WBA' for whistleblowers sourced from Whistleblowers Australia, and 'DR' for disclosure recipients, with consecutive numbers assigned for whistleblowers and disclosure recipients.

Type of behaviour reported

Responses from both the whistleblowers and disclosure recipients indicated that while the behaviour the subject of the disclosure sometimes involved dishonesty, fraud and deception, most related to what could broadly be described as ‘workplace grievances’, such as bullying, harassment and intimidation. This was often the case in more recent times. The majority of such types of behaviour would not fall within the definitions of ‘whistleblowing’ or ‘protected disclosures’ contained in Australian anti-corruption legislation. In the words of one interviewee, complaints were ‘low level, and overwhelmingly employment-related—not in the league of serious misconduct involving corruption and criminal behaviour’ (DR-27).

For some whistleblowers, particularly those from WBA, the behaviour in question had occurred many years ago, while in the case of those from STL, it had occurred in the last six years. In many instances the behaviour had gone on for some time prior to whistleblowers making disclosures. Further work is needed to understand if recent changes to whistleblowing policies and procedures have had an impact on risks of reprisal. The organisations in which misconduct was alleged to have taken place were located mainly in Victoria, New South Wales and Queensland.

Whistleblowing reporting processes

Whistleblowers working in the public sector usually made a disclosure in the first instance to their immediate manager or higher, or else to a designated disclosure coordinator. For those in the private sector, disclosures tended to be made to an independent hotline such as STOPline. In almost 70 percent of cases, reports were made by telephone, with smaller percentages by email or letter.

In general, when whistleblowers used a hotline, anonymity was assured with the hotline acting as a facilitator between the whistleblower and the client organisation. Anonymity appeared to be less certain in public sector organisations, although investigative bodies went to considerable lengths to protect the identity of those who had made disclosures. Although approximately 40 percent of whistleblowers were willing to identify themselves to hotline staff, 60 percent wanted to remain anonymous to their employers.

The desire to remain anonymous was found in a recent survey conducted by Victoria’s Independent Broad-based Anti-corruption Commission (IBAC). The survey of 1,480 suppliers of goods and services to Victorian public sector bodies found that, of the 276 respondents who said that they were unlikely or very unlikely to report corruption relating to procurement, 36 percent gave the reason that they believed their details would not be kept anonymous, and 31 percent were anxious about the personal impact of whistleblowing (IBAC 2016: 7).

Whistleblowers in the present study expressed frustration and concern regarding many procedural issues relating to the management of disclosures. Importantly, they were often not clear about the nature and extent of protections that would be provided to them once a disclosure had been made. This was seen to be of critical importance in deciding whether or not to make a report in the first instance. Interviewees were also unclear about to whom a disclosure should be made—both within and outside organisations, and the procedures that had to be followed when reporting. In addition, many were not kept informed about what was happening to their reports and what the outcomes of whistleblowing were.

Dissatisfaction also arose when disclosures were not taken seriously or were simply ignored. On occasions, this resulted in further and multiple instances of reporting being required to other bodies such as trade unions, politicians, the media, anti-corruption bodies and employment commissions. On other occasions, whistleblowers sought private legal advice with a view to commencing litigation. The result was that whistleblowers were faced with an array of avenues for reporting, but were unsure which was the most appropriate for their own situation. This occasionally meant that reports were made to the wrong body with action delayed or not pursued.

Those interviewed referred to a frustrating, time-wasting 'merry-go-round' with repeated referrals to different agencies or bodies. One whistleblower said that she 'did not know where to go...saw the union delegate...they advised to complain to the HR manager...subsequently an investigation was conducted but that was not independent' (STL-12). The same person also said there were 'no answers for two years'.

When dealing with whistleblowers in their professional capacity, many disclosure recipients said that it was important to clarify whistleblowers' expectations at the outset and to discuss what could be achieved in a practical sense. Some said that 'unrealistic' expectations of many whistleblowers led to unclear and unconstructive interactions with the respondent agencies, causing frustration and often anger among those who made reports. As one interviewee said: '[whistleblowers] find it hard to understand...and to accept that there is no investigation and nothing more is done...' (DR-20).

Consequences of reporting

Disclosure recipients' perspectives

Both whistleblowers (once their identity had become known) and some of those who dealt with them generally acknowledged that 'speaking out' led to a range of negative consequences. Although in most cases the causal relationship between reporting and reprisal was clear, on other occasions external factors could be involved in the reasons behind retaliation. As one interviewee from an integrity body said: '...detrimental action has to be linked to the protected disclosure but mostly you can't do it...it's very hard to prove' (DR-12).

Nonetheless, documented consequences included criticism, denial, blaming and retaliation by management, feelings of fear, and actual bullying and harassment. On rare occasions, disclosure coordinators saw 'violent mistreatment or assault of the whistleblower...' (DR-34). One case arose in a correctional facility where the whistleblower lived on-site and had witnessed other staff smuggling contraband into the prison for prisoners. The disclosure recipient commented:

When the whistleblower reported what he had seen, he suffered assaults for having spoken up... and there were inadequate procedures in place to guard against this...making work impossible for the whistleblower, who suffered a great deal... (DR-27).

Often, it was only the whistleblower who knew of these consequences, and a number of those who dealt with whistleblowers stated that they were unaware of what had happened to whistleblowers and had no, or little, knowledge of negative treatment that whistleblowers were subjected to. As one said: '...the disclosure coordinator does not get feedback about that...in the vast majority of cases we would not hear about whether [the whistleblowers] had been targeted or not...' (DR-14).

Where disclosure recipients were made aware of the consequences of reporting, they found instances of bullying, social isolation, not being promoted, not treated properly, and as a result, being forced to resign or even being dismissed (DR-13). In one case, menial work was assigned as a punishment for reporting accounting malpractice in a hospital:

...the whistleblower reported this to the manager who then took it to higher management. The whistleblower was called to a meeting where the whistleblower was confronted by the wrongdoers and the whistleblower was asked to repeat the allegations to their faces. The whistleblower refused to do that...but then the next day the whistleblower's job was changed...now being told to drive a tractor with a trailer and shovel and fill in rabbit holes in the park...the whistleblower resigned and never came back... (DR-27).

On other occasions, the families of whistleblowers were targeted—such as by 'driving past their homes' (DR-12).

The psychological impact on whistleblowers can be substantial:

...it is especially important for the hotline to calm the whistleblower down...they can be very distressed, crying, unable to talk; many are getting treatment, lots of sick leave or extended leave... Many whistleblowers are out of work, others stay until there is an opportunity to move... (DR-12).

One investigator with more than 10 years' experience in dealing with whistleblowers said: '...not one of all of the whistleblowers seen has remained untouched by the experience...' (DR-27). This accords with prior research into the consequences of reporting (De Maria 1999; Lennane 2012).

Whistleblowers' perspectives

Whistleblowers themselves were able to provide many examples of forms of victimisation they had suffered. Most common were bullying and harassment in the workplace, associated with ostracism, isolation, exclusion from meetings and being subject to derogatory remarks on social media. Some also faced disciplinary action and counter-allegations that had to be defended—often at considerable personal cost for legal expenses. One whistleblower recounted the views of his lawyer as follows:

Employers always have a strong case...breaches of policy in disciplinary and investigative processes don't matter much...Due to the large volume of reading matter, preparing witness statements...the cost of the hearing would be about \$15,000...and further if we are to win at the hearing or be made a better offer...the amount that [the whistleblower would be] awarded may not cover costs... (STL-19).

Overall impact

For many whistleblowers, the outcomes of disclosing illegal behaviour and misconduct were substantial. These included both the outcomes associated with observing and reporting misconduct as well as the retaliation experienced. In many cases, the acts of retaliation experienced exacerbated the overall impact on whistleblowers. One investigator stated that he always had a 'box of tissues ready' and acknowledged that it was 'very stressful for whistleblowers to come forward' (DR-34). Another said that 'some are angry at the way they have been treated by the organisation...some are petrified and fear being victimised...' (DR-20).

Emotional and psychological impacts, including stress, exhaustion, mental and physical health related issues were some of the most profound impacts experienced. These consequences have also been canvassed in previous research in the United States (Alford 2001).

One whistleblower, who had not been employed since she cut short her contract after reporting misconduct and then being victimised, said: ‘...I trust no one...I have a psychologist who helps me cope...am now a totally different person from before...it has affected me psychologically’ (WBA-46).

In addition, substantial financial impacts were suffered including costs of legal advice and litigation, and loss of income when employment was terminated, contracts were not renewed, promotions not obtained and career development impaired.

In many cases, whistleblowers were able to recall in great detail the circumstances of the wrongdoing they had observed more than 10 years ago, and there was continuing bitterness and a sense of injustice about the way they had been treated which lingered over many years.

Many whistleblowers reported that the experience had significantly affected their lives. All of the whistleblowers interviewed were, at the time of interview, no longer working for the organisation at which the misconduct, the subject of reporting, had occurred. Indeed, many were no longer working at all, being unemployed or retired.

Above all, whistleblowers had a pervasive sense of injustice at the treatment that they had been subjected to after reporting misconduct. This adversely affected their sense of trust and confidence in people and organisations. In many instances, experiences of being badly treated following whistleblowing led to radical changes in their lives, with some changing the direction of their careers, some going back to further study (in the field of employment and workplace law in particular) and others writing about their experiences and publishing books on the subject.

One whistleblower, who was suing a government department in respect of allegations made against him, said that being a whistleblower:

...just destroys you...horrible people lie about you...get their cronies to write about you...don’t do it...the worst thing I ever did...best is just to leave, resign...it changes your personality... (WBA-45).

Others had gone on to work for, or establish, whistleblower support organisations that provide practical advice about how best to handle the process and aftermath of whistleblowing.

Finally, those whistleblowers who were interviewed were asked whether they would report the misconduct again. Approximately half said emphatically that they would, while the remainder said no, never. Thus, despite the overwhelming negative consequences of reporting, one in two would not be deterred from reporting misconduct again in the future.

Support for whistleblowers

An enduring theme arising from interviews was the lack of welfare and support available to whistleblowers. This was particularly emphasised by those who dealt with whistleblowers, some of whom said that support was either absent or inadequate, apart from general workplace counselling and welfare services that were provided by some organisations. As one investigator explained:

...In terms of the whistleblower who is victimised...there needs to be in the organisation a welfare support process...although it is getting better, it is in the main poorly managed in the public sector because they don't have the support services; although there is now a greater awareness of the welfare needs of whistleblowers... (DR-27).

None of those interviewed, be they whistleblowers or those who dealt with them, indicated that the protections offered by whistleblower legislation were effective in preventing and deterring acts of retaliation and reprisal. Nonetheless, many suggestions were provided by both whistleblowers and, in particular, by those who dealt with them, as to how whistleblowing processes could be improved and how negative experiences could be minimised.

It was noted, for example, that while investigations are being conducted, it is important to keep the whistleblower informed of what was happening to the allegations of misconduct and what the outcomes were. One disclosure recipient observed:

...it is important for the whistleblower to see that people responsible for the misconduct are dealt with and disciplined, moved for causing grief...[but] often it is the whistleblower who is contained, controlled, punished and ill managed. (DR-21).

Improving protection of whistleblowers

Legislation was considered to be ineffective in protecting whistleblowers, largely because the threshold for providing protection against reprisals was set too high and was not applicable to most forms of workplace misconduct reported.

Most interviewees said that improvements in management and workplace culture would be better able to protect whistleblowers than legislation, although Australia has particular problems with its culture of 'mateship', which opposes any form of official reporting (Sawyer 2004). Interviewees stressed the need for workplace policies that are already in place to be actually implemented and complied with, as well as more practical welfare support being made available to whistleblowers.

Finally, more and better education in the workplace about whistleblowing procedures and processes was identified as important in ensuring that those who contemplate reporting misconduct in the public interest know where and how to embark on the often difficult and lengthy course of action (see also Lennane 2012).

Not all whistleblowing experiences are negative, however. Apart from the reassurance that reporting misconduct has in terms of knowing that wrongful behaviour has been identified and disclosed, the act of reporting can provide internal strength. One whistleblower remarked:

...to survive the whistleblower process, to survive the pain and suffering...you need humour, spirituality and support and find solace in writing...being a whistleblower has been very good for me...it has turned me into a totally different person... (WBA-55).

Although all of the whistleblowers interviewed had experienced acts of reprisal and retaliation after reporting misconduct, they did not perceive themselves as being victims and some felt very strongly that they should not be seen as having been victimised. Nonetheless, welfare and support services for those who report misconduct clearly need to be improved, and efforts made within organisations to prevent reprisals and to ensure that any retaliation that does occur is dealt with quickly and affirmatively.

Concluding suggestions

Although policies and procedures for the protection of whistleblowers are becoming more widespread in the public sector, in practice they may not be actively implemented and organisations may lack a willingness to ensure compliance and effective leadership in addressing toxic work cultures. In addition, some policies may not be directly relevant for most whistleblowers, as they are directed at narrowly defined, high-end categories of misconduct. Different work cultures and practices may also need to be acknowledged in making whistleblower policies and processes practical and effective.

Recent Australian inquiries into reporting of crime and whistleblowing have examined a range of strategies to improve procedures and to protect those who make reports of wrongdoing (Parliamentary Joint Committee on Corporations and Financial Services 2017; Griffith University 2017; Royal Commission into Institutional Responses to Child Sexual Abuse 2017—see particularly *Final report*, volume 7).

Those interviewed in the current study identified a number of innovative ways in which whistleblowing procedures could be improved to minimise risks of victimisation and to provide support for whistleblowers. These included:

- establishing an annual citation or award for corporate governance where whistleblowers are recognised and thanked;
- providing financial compensation to whistleblowers, such as that provided by Qui Tam procedures in the United States (see Faunce, Urbas & Skillen 2011; Parliamentary Joint Committee on Corporations and Financial Services 2017);
- prosecuting those who retaliate against whistleblowers (one whistleblower questioned if action had ever been taken in Australia);
- changing workplace culture by integrating people with different values, decreasing the risk of conflict and cultural clashes and cultivating ethical competency;
- ensuring that investigations are carried out independently, not by the organisation's human resources section, and that whistleblowers are provided with timely feedback on the results of investigations in writing;

- ensuring that grievance procedures to deal with complaints about conduct exist in all sectors—the public and private sectors as well as community and sporting groups;
- providing information and knowledge concerning reporting to colleagues and peer groups so that they can offer support and advice to whistleblowers; and
- providing independent counsellors or psychologists to guide whistleblowers through the reporting process and to assist them in cases of reprisal or victimisation.

In addition, further research is needed to explore a number of issues that were beyond the scope of the present study. These include:

- examining the differences between the experiences of recent whistleblowers and those who made reports more than 10 years ago, to determine if changes in policies and practices have had a positive impact;
- assessing the relationship between the seriousness and type of misconduct that whistleblowers reported, and the severity and duration of the retaliation experienced;
- comparing public and private sector approaches to handling whistleblowing and preventing retaliation;
- understanding the prevalence of retaliation and how cultural issues might affect its extent and impact; and
- developing best practice models which are appropriate for different types of workplaces and settings.

This study has identified a number of practical ways in which the reporting of misconduct by whistleblowers can be improved. Raising awareness of the seriousness of the retaliation that most whistleblowers experience may lead to policies being implemented that will reduce the likelihood of retaliation and make whistleblowing a less hazardous path for future whistleblowers to follow.

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