Corrections to evidence

12 May 2017

Correction 1

On page 7 of my submission I wrote the following:
Against this objective, it is easy to see how many people have labelled the bounty system administered by the SEC a success. According to the 2016 annual report to the US Congress, the number of disclosures has increased from 334 in 2011 when the bounty system was first introduced to 4,218 in 2016, almost a 13 fold increase.

It has come to my attention that the whistleblower program administered by the SEC was only in place for seven weeks in 2011. Therefore, the 13 fold increase in disclosures I refer to is an exaggeration. If we annualise the number of disclosures made in 2011 so that we are comparing like with like, the increase is circa 70%.

Given the above, I would like to amend this paragraph to read as follows:
Against this objective, it is easy to see how many people have labelled the bounty system administered by the SEC a success. According to the 2016 annual report to the US Congress, the number of disclosures has increased from 334 in 2011 when the bounty system was first introduced to 4,218 in 2016. If we annualise the 2011 figure (given the program was only running for seven weeks that year), this represents a circa 70% increase.

Correction 2

Footnote 11 on page eight states the following:
Sean McKessy, the Chief of the Office of the Whistleblower at the SEC states that investigations "can take months or even years to be concluded": [https://www.sec.gov/about/offices/owb/owb-what- happens-to-tips.shtml](https://www.sec.gov/about/offices/owb/owb-what-happens-to-tips.shtml)

Sean McKessy is the former Chief of the Office of the Whistleblower having left the SEC in July 2016. Therefore, the footnote should read as follows:
Sean McKessy, the former Chief of the Office of the Whistleblower at the SEC states that investigations "can take months or even years to be concluded": https://www.sec.gov/about/offices/owb/owb-what-happens-to-tips.shtml

Correction 3

On page six of my submission, I reference a quote made by Professor Amy Edmondson from the Harvard Business School ("When people need to go outside their team or organisation to blow the whistle, that is a sign that there was a lack of psychological safety"). This quote comes from a personal correspondence between myself and Professor Edmondson.

Submission to parliamentary inquiry on whistleblower protections in the corporate, public and not-for-profit sectors

Dennis Gentilin
Director, Human Systems Advisory

Submitted January 27th 2017

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Executive Summary

Whistleblower protection is a complex topic. There is no single, straightforward approach. Every situation and every whistleblower are unique and no legislation, no matter how well crafted, can be expected to be universally effective. However to give it every chance of succeeding, legislation must aim to address the underlying causes of inferior whistleblower outcomes.

This submission begins by reviewing (a) the factors that contribute to positive whistleblower outcomes, and (b) what role, if any, financial rewards play in enhancing whistleblower protection. Based on this review, it makes the following conclusions:

- The use of bounties and financial rewards does not necessarily increase protection for whistleblowers.
- The most effective way to achieve protection for whistleblowers is to have organisations create conditions in which whistleblowing is embraced, valued and supported.
- Whistleblowers who have suffered as a consequence of their actions should receive financial compensation (a "safety net"), payable by the organisation that has failed them.

Research demonstrates that the best way to achieve positive whistleblower outcomes is by creating environments within organisations where whistleblowing is promoted and supported. To be effective, the legislation must, first and foremost, place the onus on organisations to do this. It is when organisations fail to do this and a whistleblower suffers as a consequence that they should be made liable for providing compensation.

Given my background, this submission does not provide a prescriptive legal response. Rather, it draws on my personal experience as a whistleblower and my subsequent research in the behavioural and social sciences to develop a broad brush legislative approach – my intention is to provide guidance rather than specific detail.

I thank you for the opportunity to make a submission to this inquiry and I hope you find my contribution valuable.

1   Introduction

Whistleblowing is essential. It is an activity that organisations need to embrace and encourage. Organisation's that do this successfully will benefit enormously (and not just ethically). By harnessing the power of whistleblowing, organisations create the proverbial canary in the coal mine. Wrongdoing will be brought to the attention of management long before it decays into significant maleficence.

In recent times, a stereotype has evolved of whistleblowers which is far from ideal. They are viewed as courageous (perhaps foolish) individuals who lift the lid on scandalous conduct and then pay dearly for their actions. Like all stereotypes, how readily it can be generalised is questionable – the more likely explanation is that the incidents that fit this narrative are more newsworthy. Whatever the case, the outcomes that fit this stereotype can never be excused and are arguably the primary catalyst for this inquiry.

For the purposes of this submission, I define a whistleblower as anyone who brings wrongdoing (be it illegal or unethical) to the attention of either (a) someone within their organisation who has the required authority to take action (for e.g. a manager, executive, director, formal whistleblowing channel, etc.), or (b) someone outside their organisation (for e.g. media, lawyer, regulator, law enforcement, etc.). In both cases, the whistleblower is making the disclosure in the hope that appropriate action will be taken.

This definition is, by design, very broad. As this submission will illustrate, the best way to protect and achieve positive outcomes for whistleblowers is to have organisations create environments in which whistleblowing is encouraged, supported and embraced. Be it a minor misdemeanour or a big scandal, organisations must ensure that they are not only creating conditions where people feel that they can (and should) speak up, but when they do so they are respected, acknowledged and certainly don't suffer as a consequence of their actions.

Any legislation in this area needs to place the onus on organisations to do this. If the only thing legislation achieves is financial protection for whistleblowers who expose significant wrongdoing, then we are developing superficial solutions and failing to address root causes. This is not to suggest that some sort of financial compensation should not form part of legislation, but we will fall short if this becomes our primary (or only) method of achieving whistleblower protection.

My background is not in law or academia. Rather, my views have been formed from personal experience and research in the behavioural and social sciences. Therefore, this submission does not provide prescriptive legal remedies or review existing law in the area. However, it does develop a strawman model for a legislative approach based on (a) the factors that aid in promoting positive outcomes for whistleblowers, and (b) the benefits and drawbacks associated with financial compensation for whistleblowers.

The remainder of this submission proceeds as follows. The following section highlights the types of factors that promote and inhibit positive whistleblowing outcomes. Section three discusses a specific type of whistleblower protection which has received considerable attention of late, namely financial rewards. Section four outlines what organisations can do

to not only encourage whistleblowing, but provide appropriate support for those who blow the whistle. Section five concludes and provides a possible legislative approach.

2   Factors supportive of whistleblowing

One of the central themes underpinning the conclusions in this submission is that if our goal is to provide whistleblowers with increased protection, the best way to achieve this is to have organisations create the conditions that promote positive outcomes. Admittedly this is ambitious, but if we don't at least encourage organisations to do this, we are failing to address the root cause of inferior whistleblower outcomes.

Although there has been an enormous amount of research conducted into the factors that promote positive responses to whistleblowing, there is still a lot we don't know. The primary reason for this is that the majority of the research involves placing people in hypothetical scenarios and asking them how they would respond. For obvious reasons, getting access to organisations and actual whistleblowers to conduct research is difficult.[1]

Despite this, there is a lot that can be gleaned from the existing research. One of the consistent findings is that organisational context plays a central role in not only determining whether a whistleblower will report wrongdoing, but how the organisation responds if they do so.[2]

2.1   Organisational context

Social scientists have repeatedly demonstrated how the situation can profoundly influence individual conduct.[3] Even people of seemingly unquestionable character can, in the right context, behave in very uncharacteristic ways. Whistleblowing is no different. There are a multitude of organisational factors that can work to dissuade whistleblowing. Two of the most prominent are fear and futility.

With respect to the former, when people feel there will be consequences associated with speaking up, they will be far more reluctant to do so. Amongst other things, whistleblowing can be a career limiting move and history has shown that those who do blow the whistle can experience retaliation and other adverse outcomes. Meanwhile, if people believe blowing the whistle is futile because those in a position to take action will turn a blind eye, then this too will encourage silence.

On the flipside, there are many organisational factors that are supportive of whistleblowing. One is "organisational justice".[4] When people feel that ethics and moral conduct are highly valued, when incidents of wrongdoing are appropriately addressed, and when leaders treat their people respectfully and listen to their concerns, then there is a much higher likelihood

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[1] There are some exceptions, one of the most notable being the Whistling While They Work research project being led by Professor AJ Brown out of Griffith University: http://www.whistlingwhiletheywork.edu.au/.

[2] Vadera, A. K., Aguilera, R. V., & Caza, B. B. (2009). Making sense of whistle-blowing's antecedents: Learning from research on identity and ethics programs. *Business Ethics Quarterly, 19*(4), 553-586; Treviño, L., & Weaver, G. (2001). Organizational justice and ethics program ''follow-through'': Influences on employees' harmful and helpful behavior. *Business Ethics Quarterly, 11*(4), 651–671.

[3] Ross, L., & Nisbett, R. E. (2011). *The person and the situation*. London, UK: McGraw-Hill.

[4] Seifert, D. L., Sweeney, J. T., Joireman, J., & Thornton. J. M. (2010). The influence of organizational justice on accountant whistleblowing. *Accounting, Organizations and Society, 35*(7), 707-717.

that unethical conduct will be reported internally by a whistleblower. What's more, this type of context will also increase the likelihood of a positive outcome.

Similarly, psychological safety also promotes positive whistleblowing outcomes.[5] Psychological safety exists in environments where people feel that they can challenge their peers and senior leaders without fear of retribution and where feedback (be it positive or negative) is delivered regularly and respectfully. As Professor Amy Edmondson who founded the concept says, "When people need to go outside their team or organisation to blow the whistle, that is a sign that there was a lack of psychological safety."

Of the many factors underpinning organisational justice, psychological safety and other constructs that contribute to positive whistleblowing outcomes, one is ethical leadership.

2.2   Ethical leadership

Leaders at all levels of an organisation play a central role in shaping context. Arguably the most powerful way they do this is through their own conduct. When leaders demonstrate a deep commitment to their organisation's values, they help create environments that are supportive of whistleblowing. Alternatively, when they publicly proclaim that they are committed to ethical principles but behave in a way that suggests otherwise, they will foster cynicism and distrust, creating an environment that dissuades would be whistleblowers.

Leaders also create a context that is supportive of whistleblowing by mitigating (and ideally eliminating) fear and futility. If people feel that their leaders are inaccessible, or if leaders respond defensively or dismissively when they are made aware of wrongdoing, then this will not create a context that encourages whistleblowing. Furthermore, even if a leader does listen, the failure to take appropriate action after they have been made aware of wrongdoing will once again do little to encourage people to speak up.

2.3   Whistleblower self-efficacy

Finally, positive whistleblowing outcomes are also aided by how wrongdoing is exposed by the whistleblower. As any whistleblower will tell you, this is no easy task, especially when one must challenge people in positions of power. Those that are in a position to blow the whistle will be more likely to do it effectively and achieve the desired outcome if they have the required skills and organisational knowledge. Amongst other things, who they speak to, how they approach them and what they say will play a role in determining the organisational response, positive or otherwise.

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[5] Edmondson, A. (1999). Psychological safety and learning behavior in work teams. *Administrative Science Quarterly, 44*(2), 350-383.

3   Financial rewards for whistleblowers

Financial rewards is a form of whistleblower protection that has received considerable attention in recent times. Much of this has been driven by the experience in the US. The Dodd–Frank Wall Street Reform and Consumer Protection Act, which was signed into law in July 2010, provided the Securities Exchange Commission (SEC) with the ability to issue financial awards to whistleblowers who make "tips" (disclosures) that result in prosecutions and fines.

When reviewing the efficacy of financial rewards for whistleblowers, one must not lose sight of the overarching objective. If our goal is to provide protection for whistleblowers and promote positive outcomes, then any financial reward that is incorporated into the legislation should be designed with this end in mind. Using this lens, this section begins by reviewing the "bounty" system that exists in the US. Following this, an alternative approach that provides whistleblowers with a financial "safety net" is briefly discussed.

3.1   Financial bounties for whistleblowers

The US bounty system is just one part of a large whistleblowing program run by the SEC. In and of itself, it was not put in place to provide protection for whistleblowers. This is not to suggest that the SEC is not interested in protecting whistleblowers – far from it. Rather, the object of the bounty system was to not only encourage whistleblowers to come forward, but also to try and elicit higher quality information.[6]

Against this objective, it is easy to see how many people have labelled the bounty system administered by the SEC a success. According to the 2016 annual report to the US Congress, the number of disclosures has increased from 334 in 2011 when the bounty system was first introduced to 4,218 in 2016, almost a 13 fold increase.[7]

However, as with all financial reward systems, the bounty system has driven some perverse outcomes. Psychologists have known for some time that introducing monetary rewards can "crowd out" intrinsic motivation.[8] In the case of whistleblowing, when moral responsibility is superseded by economic interests, the result can be an increase in fabricated claims. There is evidence suggesting that this is what is occurring in the US, although to what extent is unknown.

The reason it is difficult to deduce the true extent of meritless claims is because the SEC does not disclose the percentage of "tips" that actually progress to investigations. However, some inferences can be made. For example, in the 2015 annual report, the SEC stated that

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[6] Froomkin, D. (2012, January 6th). SEC whistleblowers waiting for big payouts as rumors of first award mount. *The Huffington Post*. Retrieved from http://www.huffingtonpost.com.au/entry/sec-whistleblower-reward-payout_n_1560044

[7] US Securities and Exchange Commission. (2016). *2016 Annual Report to the Congress on the Dodd-Frank Whistleblower Program*, page 23. Retrieved from https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2016.pdf

[8] Deci, E. L. (1971). Effects of externally mediated rewards on intrinsic motivation. *Journal of Personality and Social Psychology, 18*(1), 105-115.

the "OWB [Office of the Whistleblower] currently is tracking over 700 matters in which a whistleblower's tip has caused a Matter Under Inquiry or investigation to be opened…"[9] They go onto say that "not all of these matters will result in an enforcement action…"

If we assume that these investigations have arisen from disclosures made over the prior 24 months,[10] then this means that less than 10% of disclosures resulted in investigations (there were a total of 7,543 "tips" received in the 2014 and 2015 calendar years). Obviously we would need to benchmark this figure against other programs to make an informed judgement (information that is once again difficult to procure), but my guess is that this would be considered to be a very low conversion rate.

In addition (and more concerning), the SEC also stated in their 2015 annual report that two individuals made over 200 claims for rewards under the program, all of which were denied. One claimant was accused of "knowingly and wilfully" making "false, fictitious, and fraudulent statements and representations to the Commission…"[11]

If our overarching objective is to increase the number of disclosures made by whistleblowers, then perhaps some kind of bounty system is the right approach.[12] If however we are aiming to protect whistleblowers and promote positive outcomes, then I question whether a bounty system is the best way to achieve this. An alternative approach that is more aligned to this goal would be to provide whistleblowers with a financial safety net that compensates them for any losses incurred as a result of their experience.

3.2   Financial safety net for whistleblowers

In the worst case scenarios, when organisations fail to create environments that promote and protect whistleblowers, whistleblowing can be an extremely costly exercise. Loss of employment, impaired career prospects, legal fees, repercussions for mental and physical health, and, at the extreme, family breakdowns are all issues that whistleblowers have had to contend with at considerable emotional and financial cost. Given these costs, if our objective is to provide protection for whistleblowers, it would be proper that legislation in this area should provide some type of financial safety net.

Obviously the size of the safety net would need to be calculated on a case by case basis. However, it should provide coverage for as many of the financial consequences associated

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[9] US Securities and Exchange Commission. (2015). *2015 Annual Report to the Congress on the Dodd-Frank Whistleblower Program*, page 25. Retrieved from https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2015.pdf

[10] Sean McKessy, the Chief of the Office of the Whistleblower at the SEC states that investigations "can take months or even years to be concluded": https://www.sec.gov/about/offices/owb/owb-what-happens-to-tips.shtml

[11] US Securities and Exchange Commission. (2015). *2015 Annual Report to the Congress on the Dodd-Frank Whistleblower Program*, page 14. Retrieved from https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2015.pdf.

[12] As anyone who has run a whistleblower program will tell you, the number of disclosures is not necessarily the most reliable way to measure the success of the program.

with an adverse whistleblowing outcome (be they direct, indirect, in the present or future). For example, this would include (but not necessarily be limited to):

- Loss of income.
- Medical and legal fees.
- Relocation costs caused by threats to personal safety or seeking to improve employment prospects.

Furthermore, the compensation should not be associated with "loopholes" or caveats that make it potentially refundable.

If it is proven that an organisation (or an individual for that matter) has treated a whistleblower unfairly, then they should be held accountable. For the organisation, accountability could take several forms, but one would be to make them liable for the costs associated with the safety net. What's more, in determining whether a whistleblower has been failed, the burden of proof should fall on the organisation. That is, the organisation must demonstrate what actions it took both during the incident and in the months and years preceding it to create an environment that was supportive of whistleblowing.

With the above in mind, the following section outlines the types of actions an organisation can take to prove that they are making efforts towards creating an environment that promotes positive whistleblowing outcomes.

4   What organisations can do to promote positive whistleblowing outcomes

As section 2 outlined, organisations play a central role in promoting positive whistleblowing outcomes. By extension, to be most effective, any legislation in this area must place the onus on them to create conditions that are supportive of whistleblowing. Legislation that fails to do this is not addressing the underlying causes of inferior whistleblowing outcomes.

So what can organisations do? Admittedly, creating contexts that are supportive of whistleblowing is not a straightforward task. What's more, our knowledge in this area is still limited to some degree given (as mentioned in section 2) the limitations associated with much of the research. However, there are some practical, proven steps organisations can take, some of which are outlined below.

4.1   Formal whistleblowing programs

The minimum requirement for any organisation is the development and implementation of a formal whistleblowing program. Amongst other things, these programs should:
▪ Be easily accessible.
▪ Be well communicated so that employees are not only aware of them but know how to access them.
▪ Provide employees who use them with anonymity and protection.
▪ Ensure that all disclosures, unless proven meritless, are properly and independently investigated.
▪ Where possible, keep whistleblowers abreast of how any investigation associated with their disclosure is progressing.
▪ If appropriate, seek and incorporate the whistleblower's input during the investigation.
▪ Take appropriate action upon completion of the investigation.
▪ Provide regular reporting to the board.

Recently, the Australian Bankers Association published a review of formal whistleblowing programs for Australian banks.[13] The report compared Australian bank programs against the policies implemented by a sample of 30 global banks. The approach enabled them to provide a comprehensive overview of what constitutes "best practice". It is interesting to note that amongst other things, the report concluded:

Overall, the Australian banks we sampled have comprehensive whistleblower programs that, in almost all cases, meet or exceed global best practice for the majority of the elements…

Despite this, recent incidents have demonstrated that Australian banks have at times failed to achieve positive outcomes for whistleblowers.

This illustrates why formal whistleblowing programs should be seen as a baseline requirement – they are necessary but far from sufficient. If the organisational context does not promote and support whistleblowing and people feel that reporting wrongdoing is futile or associated with consequences, then even the best formal program will not necessarily

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[13] Australian Bankers Association. (2016). *Review of whistleblowing protections by Australian banks.* Retrieved from http://www.betterbanking.net.au/wp-content/uploads/20161007-Whistleblower-Report-Final.pdf

encourage whistleblowing or for that matter deliver positive outcomes. Organisations need to do a lot more.

4.2 A more granular view of attitudes & leadership

As discussed in section 2, a big factor determining whether an organisation successfully creates an environment that promotes and is supportive of whistleblowing is ethical leadership. This begins with boards and executives. In organisations where the most senior leaders are unethical or lack integrity, then the likelihood of people speaking up in support of the organisation's purported values is reduced.

However in large organisations, the so called "tone from the top" can dilute very quickly. Even if the board and executive are quintessential role models, situations can arise where leaders at lower levels of the organisation create micro cultures where whistleblowing is frowned upon and shunned. Organisations therefore need to have mechanisms in place that provide them with a more granular view of attitudes towards speaking up and whistleblowing.

What these mechanisms will undoubtedly find is that in large organisations, attitudes towards whistleblowing vary and are inconsistent. When organisations identify pockets in which whistleblowing is not encouraged and supported, then these can be targeted for greater scrutiny. If this scrutiny reveals that dysfunctional leadership is presiding over a toxic work environment, punitive measures may be required. Less extreme problems could (perhaps) be addressed with employee training.

4.3 Employee training

Although the effectiveness of training is often questioned, research does show that properly designed training programs can increase the likelihood that employees will report unethical conduct.[14] This is not to suggest that training should be viewed as a panacea. Indeed, in the worst case scenarios where an authoritarian or volatile leader is presiding over a dysfunctional workplace environment, training will not be the answer (my comments above on more punitive measures refer).

What is most often the case is that leaders are not aware that they are creating an environment that fosters silence and shuns whistleblowing – they do so unwittingly. Actions and decisions that are seemingly inconsequential can send a message that whistleblowing is not welcomed. With this in mind, well designed training can help leaders develop the skills and self-awareness required to shift negative perceptions associated with whistleblowing and create environments that support those who blow the whistle.

In addition, training can also be used to help employees develop the skills to speak up. Needless to say, these are skills that are not just valuable to people in less senior roles. All of us, regardless of our seniority, will potentially find ourselves in situations where we need to

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[14] Warren, D. E., Gaspar, J. P., & Laufer, W. S. (2014). Is formal ethics training merely cosmetic? A study of ethics training and ethical organizational culture. *Business Ethics Quarterly 24*(1), 85–117.

report some form of wrongdoing. And when we do, having the skills to know how to do so effectively increases the likelihood of positive outcomes.

4.4   Embracing transparency

Whistleblowers increase transparency. By exposing wrongdoing, they shine a torch on conduct that leaders either are not aware of or would rather remain concealed. By extension, it is organisations that embrace transparency who are more likely to be supportive of whistleblowing. It is when organisations obfuscate and operate under a shroud of secrecy that, for obvious reasons, life is made difficult for whistleblowers.

There are limits to how transparent organisations can be. Clearly there is a raft of information that for a variety of reasons (legal, privacy, fiduciary duties, etc.) organisations are not able to place in the public domain. However beyond this, there is also information that organisations choose either to conceal or perhaps reveal in a way that omits or manipulates important details to favourably shape public perception.

It is by being more forthcoming and honest with this latter information that organisations can demonstrate a commitment to transparency. By doing this, they will send a message to their people that they are not afraid to air their dirty washing and will embrace those who bring wrongdoing to their attention.

5   Conclusion

There are two primary conclusions that can be drawn from this submission. First of all, the best way to promote positive outcomes for whistleblowers is to have organisations create the conditions in which whistleblowers are listened to, respected, and have their concerns appropriately addressed. This should be the overarching goal of any legislation. Second, although some type of financial safety net should be provided to whistleblowers, financial compensation should not be the primary goal of legislation. This approach not only fails to properly address the true nature of the problem but could potentially drive perverse outcomes.

A legislative approach that could achieve these goals is to make organisations liable when they have failed to properly support a whistleblower. In such cases, if organisations are unable to provide demonstrable evidence showing that they have seriously attempted to create an environment that promotes and protects whistleblowers, they must compensate the whistleblower. The research provides guidance on the types of steps organisations should take to help promote positive whistleblowing outcomes. As outlined in section 4, this requires far more than an effective formal whistleblowing program.

For example, one would expect that an organisation would be able to provide credible responses to the following types of questions:
- Did the organisation attempt to identify how comfortable people felt about speaking up?
- If there was evidence of discomfort, was it systemic or localised? How was this addressed?
- Did they appropriately deal with leaders, at any level, who were failing to create environments that was supportive of whistleblowing?
- Was appropriate training provided to leaders? To employees?

In seeking evidence from organisations, the legislation should stop short of being prescriptive of what is required. How an organisation goes about creating environments that promote positive whistleblowing outcomes should be left for the board and management to decide. This is complex work with no single solution – an intervention that works in one organisation could prove to be futile in another. What's more, if the legislation were to prescribe what is required, it will stifle the development of creative responses and risk promoting a compliance orientated "tick the box" approach.

It must also be acknowledged that it is entirely possible for a whistleblower to feel the need to leave an organisation even though their employer has acted in good faith and done everything they can to be supportive. This typically happens when the circumstances surrounding the incident make it impossible to protect the whistleblower's anonymity. Unfortunately, there is still significant stigma associated with whistleblowing – the label is a heavy burden to carry. Under these circumstances, it is easy to understand why a whistleblower no longer feels comfortable remaining at the organisation, despite their employer's best efforts.

Legislation structured this way should encourage organisations to create conditions that promote positive whistleblowing outcomes. Organisations who do this successfully will minimise the likelihood that they will be required to compensate a whistleblower – their employees will be more willing to report wrongdoing in its formative stages, prior to it decaying into a big scandal. It is when minor transgressions decay into significant maleficence that the costs for all parties involved, not least of which the whistleblower, magnify.

6   Appendices

6.1   Author bio

Dennis Gentilin is the Founding Director of Human Systems Advisory, a for profit social purpose consulting firm that believes the majority of conduct issues within organisations are not caused by ineffective formal systems, but rather by ineffective human systems. It is by strengthening their human systems that organisations not only increase their ethical resilience, but create the conditions that feed future prosperity.

Dennis has had over 15 years' experience in the financial services industry where he held a number of senior roles in financial markets and corporate strategy. Early in his career he was publicly named as a "whistleblower" in a FX trading scandal, an incident that was the catalyst for his interest in human and organisational behaviour.

Dennis is the author of *The Origins of Ethical Failure*, a book that has been shortlisted for the 2017 Management Book of the Year award by the Chartered Management Institute in the UK. He has appeared on the BBC's Business Matters program and contributes to a variety of blogs, newspapers and journals both in Australia and overseas on the topics of ethics, leadership and organisational purpose.

Dennis is an honorary fellow at the Centre for Ethical Leadership and holds degrees in psychology and banking and finance.

6.2   Australian Financial Review article

Should whistleblowers receive a reward for speaking up?

Dennis Gentilin ● 28ᵗʰ June 2016.

The increased exposure recently provided to the actions of whistleblowers at organisations like CommInsure, Theiss and 7-Eleven is, in a perverse way, a very positive development. Obviously we feel for those who under extremely difficult circumstances have taken considerable personal risk to expose wrongdoing, especially if their selfless actions have come at a cost. This latter outcome can never be excused. However, the increased publicity is proving to be a catalyst for change.

And there is no question that change is needed. At the organisational level companies must begin to recognise that there are enormous benefits associated with giving employees voice. Even the best laid compliance framework has limitations, and the most effective way to overcome these is to promote and embrace a speak up culture – employees shining a torch on poor conduct should be cherished not chastised.

But change is also required at the regulatory level. The current legislative framework surrounding whistleblowing in Australia can at best be described as patchwork. The level of protection a whistleblower is afforded depends on whether they are a private or public sector employee and the jurisdiction in which they find themselves in. Far from ideal.

Some have even gone as far to suggest that a US style bounty system should be introduced, where whistleblowers are rewarded for reporting wrongdoing. Although I support the push for regulatory reform, I remain to be convinced on the efficacy of a reward system.

I recently attended a conference at the Stern School of Business in New York hosted by [Ethical Systems](#) and the Behavioral Science and Policy Association. One of the panel discussions was aptly titled "Beyond carrots and sticks: How to encourage a speak up culture." The panelists, comprising of leading academics and practitioners, discussed some of the factors that we know can help or hinder the development of a speak up culture.

For example, working for ethical leaders and being surrounded by supportive colleagues greatly increases the likelihood that people will speak up. So too does the existence of "psychological safety", a dynamic where people feel that they not only can voice their values, but when they do so they won't be ignored or shunned.

On the flip side, people will be far less likely to speak up in organisations where it is perceived that there is no justice, or that raising concerns comes with consequences. That is to say, "fear and futility" are two of the biggest silencers of employee voice.

However, there was also an admission from the panelists that there is a lot we don't know. In presenting findings from some of his preliminary research, Assistant Professor Sean Martin from Boston College illustrated how people perceive speaking up about ethical issues to be far more "scary" and less "easy" than speaking up about a problem that doesn't have an ethical dimension or speaking up with new ideas.

But why is this so? And what motivates some people to speak up on ethical issues when others may not, especially within environments that may not encourage them to do so? And would the introduction of a reward system necessarily change this?

An Australian research initiative, "Whistling While They Work", led by Griffith University's A J Brown, will help shed light on some of these unknowns. The research, which is open to any Australian or New Zealand organisation, is ambitious in its reach. It will explore, amongst other things, the incidence and significance of whistleblowing, the experience of whistleblowers, and what constitutes superior or inferior organisational responses. It is the first research project of its kind, worldwide, to explore the latter of the above issues.

The research will be revealing and provide much needed data. In addition to confirming some of the existing knowledge base, I expect that it will uncover numerous examples of employees who after having exposed wrongdoing in their organisations, have flourished rather than suffered through the ordeal. We need more of these stories.

These stories will help paint a picture of the circumstances within organisations that help promote employee voice. It is by working hard to cultivate these circumstances that leaders will successfully create environments rich in challenge and feedback. In these environments, whistleblowers will not require, or for that matter be motivated by, incentives.

The risk with adding incentives into the mix is that they skew motivations, creating scenarios where people see whistleblowing as an opportunity to "hit the jackpot" rather than an act of virtue, something that the US experience has demonstrated. I find it ironic that we view incentives as a potential mechanism to help address some of the challenges associated with whistleblowing given the central role they have played in many of the ethical failures we have witnessed in the business world.

Carrots and sticks are not the answer. The best approach is to create environments within organisations where speaking up is encouraged, embraced and normalised. But I stand to be corrected once the "Whistling While They Work" data speaks.

6.3 Australian Financial Review article

A whistleblower shows how to stop a scandal before it starts
Dennis Gentilin ● 8th April 2016.

Leaders, give your people voice – it will pay enormous dividends.

Recently I was a panel member for a discussion on whistleblowing at the ASIC annual forum. For most of us, whistleblowing conjures images of people lifting the lid on big scandals and then suffering immeasurably for their actions.

To be sure, many ethical failures are exposed through the selfless actions of whistleblowers. And yes, unfortunately, there are detrimental consequences associated with these actions for some of these whistleblowers. However this stereotype fails to recognise the true value whistleblowers bring to organisations.

The reality is that when an incident has degraded to the point where it becomes a big scandal, then there were multiple "whistleblowing" moments leading up to the event that leaders either missed or failed to embrace. It is the failure to capitalise on these moments that leads to a scandal.

And this leads us to the overarching challenge for all organisations: How do we embrace these "whistleblowing" moments? More specifically, how do we create environments that not only welcome challenge and feedback, but respect, listen to and appropriately address the concerns of those who do speak up?

Like all topics in the area of ethics and culture, there are no straightforward answers. But there are steps that can be taken.

Firstly, the tone from the top is crucial. But as is always the case the formal messaging, be it the codes, the compliance manuals, or the finely crafted communications are all but redundant if the actions, choices and decisions of the board and executive are not supportive of these artefacts.

As an example, take the recent events at CommInsure. In the exposé on ABC's 4 Corners program, CBA chief executive Ian Narev stated the following:

…we are emphasising the importance of people speaking up when they see something wrong, but actually also when they've got good ideas, because that's a big part of being in an innovative culture.

These are wise words. But how does one reconcile the above comments with the fate of Chief Medical Officer Dr Koh?

After making numerous attempts to raise the red flag, Dr Koh eventually took his concerns to the CommInsure board in early 2015. Later that year he was dismissed for allegedly sending confidential information to his personal e-mail account.

Decisions like these send a powerful message. They imply that there are other things that are valued more highly at CBA than speaking up.

I am not suggesting that Mr. Narev wasn't sincere when he spoke about the importance CBA are placing on a speak up culture. However, if future decisions continue to send a message that are incongruent with his public pronouncements, then CBA staff will rightly become cynical. What will then evolve is a culture of silence, the complete antithesis of what I'm sure Mr Narev is hoping to create.

Secondly, organisations can create a culture rich in challenge and feedback by having leaders at all levels of the organisation endorse and promote it. In large organisations, it is not possible for the board and executive to solely dictate the degree to which speaking up is embraced and valued.

Rather, leaders at all levels of the organisation play a role. Through character and humility, they must work hard to create environments in their teams where challenge and feedback is delivered regularly and respectfully. Environments where people feel that they can (and should) speak up and voice their concerns. And environments where the conversations that are considered to be "difficult" become part of the normal discourse.

A third way that organisations can create a culture rich in challenge and feedback is to equip people with the skills to do so. Regardless of our seniority, we all face moments where we must challenge our leaders and speak truth to power. This is no easy task. It is especially challenging in environments where leaders are autocratic and inaccessible.

The work of Mary Gentile is worth mentioning here. After experiencing a "crisis in faith" with traditional approaches to business ethics education, Gentile developed a curriculum called Giving Voice to Values. The aim of the curriculum is to equip people with the tools they need to skilfully and appropriately use their voice when required, and ultimately make speaking up a "default behaviour".

Which brings me to formal whistleblower programs. These are without question necessary, but are a last line of defence. What's more, in environments where speaking up is chastised and silenced, people are far less likely to take comfort and seek refuge in a whistleblower program. In these instances they are the proverbial band aid treating a festering wound.

So leaders, share the megaphone. Give your people a platform to speak up and treat them with the respect they deserve when they do so. And if there are leaders in the organisation who don't buy into the importance of having all voices heard, respond appropriately – your organisations will be richer for it.