



ROCpod episode 6 – Spotlight on whistleblower disclosures

The ROCpod was a monthly podcast focussed on the regulation of registered organisations. It shared information, tips and tools for improving compliance with legislative requirements.

The podcast was key part of the Registered Organisations Commission's (ROC) education strategy. The ROC was abolished on 6 March. The Fair Work Commission (the Commission) is now the regulator for registered organisations. Although processes may change under the Commission, much of the podcast content is still useful.

Email any questions about anything in an episode to regorgqs@fwc.gov.au.

Speaker Key

BS	Bill Steenson
AJ	Professor AJ Brown
AN	Announcer

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MG Welcome to today's episode of ROCpod talking with the registered organisations commission. My name is Bill Steenson. I'm a Principal Lawyer with the Compliance and Investigations Team.

In this episode we'll be talking about whistleblowers and whistleblowing. The Registered Organisations Commission has a protected disclosure scheme which allows eligible disclosers to tell us about conduct that might be a breach of the Registered Organisations Act or other legislation.

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BS With me today is Professor AJ Brown who is our guest speaker on this topic. AJ is a professor at Griffith University and has substantial experience in the field of whistleblowing, having conducted and led research into whistleblowing in both the private and public sectors. We're very pleased to have him with us today. Welcome AJ.

AJ Good morning Bill.

BS Whistleblowing is an interesting area, how did you get into it?

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AJ Well I think I've always been interested in the accountability of institutions and organisations. But it was actually when I was working for the Commonwealth Ombudsmen many years ago dealing with complaints from the public and from business about things going wrong inside government. And I rapidly found out that the best people or people with the best information about what had really happened, were people from within the public service.

I think the same is true in any organisation. And very often people have that information. Very often people do speak up about that information helping organisations and helping regulators like the ombudsmen or the Registered Organisations Commission.

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AJ But their role is very often not recognised and those people very often aren't protected as often as they should. So in all my studies and research and work that I've done on accountability and integrity issues since then, it's always been very obvious that whistleblowing is a very important issue.

BS And so while whistleblowing has received quite a bit of attention recently, including in legislation, it's not actually such a new phenomenon is it?

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AJ Absolutely not. In fact I'm giving a speech, the 130th anniversary of a big speech given by the former New South Wales Premier Sir Henry Parks from the 1880's. And it turns out that Henry Parks was himself a whistleblower way back in the 1830's, 1840's. And that's an iconic Australian who played that role very early in his career.

We know that as long as there's been institutions and organisations, people inside the institution who have seen that something is going wrong and then are prepared to speak up about it have been vital to the health and the wellbeing of those institutions.

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AJ And then very often have made a huge difference if they've needed to go public. It's really only in recent decades that as life has got more complex, business risks and integrity risks have got larger. Institutions have got bigger and more powerful. And I think we've realised that whistleblowers are not just a natural part of organisations but are actually vital for the whole of society.

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AJ That that's how we very often find out about things which really need to be fixed.

BS And so given that whistleblowing is such an important issue, can we turn to where and how people raise their concerns? Is it in fact true that many people raise their concerns within their organisations internally first rather than with the regulators necessarily? And given that you've done quite a bit of research in this area, can you explain what the research found about that?

AJ Absolutely. I think it's a common mistake to assume that just what we hear about in the media is whistleblowing.

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AJ That it's only people who are inside organisations who have ended up going public that have blown the whistle. Or even only people who have gone to a regulator.

What we've found in our research which was pretty big research. We had over 17,000 employees across 46 organisations in Australia and New Zealand of all sorts of sizes and from the public sector and the private sector.

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AJ It's one of the world's first really systematic looks at whether there's significant differences in the dynamics of when people speak up about wrongdoing in different types of organisations in the private and public sector.

And what we've found which is consistent with previous research is that the bulk of people, on average out of our 5,000 or so people who have reported wrongdoing out of that 17,000 respondents that the vast bulk actually never go outside. That about on average about 72% of all those reporters blew the whistle internally and only ever internally.

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AJ And even if it wasn't resolved, even if they weren't listened to then very often people



do just stay silent when it would be good if they went outside and went to a regulator or if necessary even went public.

So if it was a higher proportion in the private sector, that would stay internal but it was about 80% of all the whistleblowing that was going on was just staying within the organisation when it came to private companies.

And so it's really only the tip of the iceberg and very often we know that it's because things haven't been handled well that they do end up going outside.



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AJ And that really organisations, almost always, have the opportunity in the first place to both hear that there are problems and then do something about them. And look after their own people wherever possible. And that very often will avoid the need for people to go outside.

And that really organisations, almost always, have the opportunity in the first place to both hear that there are problems and then do something about them. And look after their own people wherever possible. And that very often will avoid the need for people to go outside.

BS And now, that research that you're referring to is the recently released Clean as a Whistle report, which is part of the Whistling While they Work Project?

AJ That's correct.

BS Now AJ, what are the consequences of an organisation if they don't deal effectively with disclosures when they're made to them internally?



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AJ It's one of these really interesting things. It's almost intuitive or natural to not want to hear a disclosure or not want to know that something's going wrong. Or to try to avoid dealing with it. But the whole experience of whistleblowing tells us that people really need to think a little bit longer term than that.

Because the consequences of not dealing effectively with disclosures is likely to mean very often, not always, but very often that there is something wrong in the organisation that isn't being addressed and isn't being dealt with.



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AJ And the question is well, is that wrongdoing? Or are those concerned their issues are just going to go away? Because you're not listening to a whistleblower or are they just going to fester or get worse or blow up in some other form?

But also, dealing effectively with disclosures also means looking after the people



involved and dealing with the people implications of the fact that a disclosure has been made. So a lot of organisations will actually listen to whistleblowers. Will actually realise that yes, there's a problem here. We've got to deal with it and get on with dealing with that problem.



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AJ Fixing that problem but still not do a very good job of looking after the interests of the whistleblower or just dealing with the conflict internally that can be caused when people have been forced into a situation or got themselves into a situation where they've reported wrongdoing.

Organisations often get into the trouble of actually dealing with the wrongdoing that's been reported in some way, shape or form, but still end up having to suffer internally from a lot of angst, pain, lost time and cost and expense, because they've forgotten to think seriously about, okay how do we support the people who raised concerns?



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AJ How do we deal with the workplace risks and conflicts that this whole situation has caused in order to try and demonstrate to our organisation that we do value people who speak up. They will be supported. That we're interested in everybody's wellbeing and that people will be justly whatever their role has been in the situation.

BS It seems then that having a policy to deal with these things, systems and processes is something that's also beneficial for organisations?



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AJ Well you've got to know what you're going to do. Definitely having a policy is a good thing. The bigger you are then the more important it is to have a written policy or guideline or set of policies. But it's very easy, as everybody knows to have written policies that don't actually relate to what actually happens or which don't get implemented, or that people aren't even aware of.

The key thing is for people to know, what are we going to do if somebody had a concern and they were going to speak up about it? What processes have we got in place to make sure that people can speak up and that they know how to do it?



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AJ And then what processes have we got in place for managing the whole situation if people do raise concerns. There's a whole lot of issues that people have got to think about to do with confidentiality, managing a situation if confidentiality is impossible with the investigation side but also with assessing what could go wrong for the person who's blowing the whistle.



And how to keep things under control and keep things proportionate. Keep things manageable. Not have things blow out of proportion.



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AJ And so all of those things is a matter of having the right processes or the right programme and that will be different for every organisation. And then making sure that's supported in a policy and is clear to everybody is just the documentation side if you like.

BS And something else I suppose that's going to be different from organisation to organisation is their culture. I guess that question of where does policy and law sit vis-à-vis culture and organisation, and how important is that culture in addressing these issues?



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AJ Yes, we actually know from the research really well when we look at the different factors that contribute to good outcomes for organisations. By good outcomes we mean from the thousands of whistleblowing cases that people have told us about through the surveys, and this is managers, as well as governance professionals in organisations.

In those thousands of cases, good outcomes are ones where investigations have been conducted successfully, have got known outcomes and very often wrongdoing is found and dealt with. And that people who have blown the whistle are saying that they weren't mistreated by management or by co-workers and that they suffered fewer repercussions.



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AJ And those are the indicators of good outcomes. What we know is that what's in organisations written policies very often is not an indicator at all of whether or not an organisation is going to have good outcomes.

What is crucial is we know that having good processes for investigating and dealing with issues and good processes for supporting people who speak up are crucial, but we also know that it's the ethical culture and climate in the organisation that are the crucial things that appear to explain whether or not that support is provided.



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AJ And whether high quality responses are put in place for when people speak up.

What we also know is that culture and climate isn't just tone from the top. Tone from the top is really important. It's got to be the head of the organisation and the senior levels of the organisation have really got to demonstrate clearly themselves, this is



how we do things in this organisation and we do them ethically and fairly and we look out for our people and people are treated appropriately and with justice.



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AJ But it's also got to be demonstrated in the immediate workplace of people. If it's not actually lived out by more junior managers in the way that they run some more immediate workplace then people won't believe it either. So those things are actually crucial so that people stop and think, okay I do have a concern. I can see that there's something going wrong here or I'm just worried about it. And just know that they're in an organisation where it is safe to raise it with somebody.



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AJ And to do it early while it's still manageable rather than before it becomes a crisis or some huge dispute or conflict that's been festering for far too long.

BS I guess that then brings us to the question of how do we challenge this perception that becoming a whistleblower and reporting misconduct can do you more harm than good?

AJ The thing that we know from our thousands of cases is that a majority of people who speak up within organisations, at least in terms of the organisations that have been part of our research.



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AJ They might be better than average but nevertheless, there's a mixed bag. Actually a majority of those people who spoke up ended up saying that they don't feel they were mistreated. That they were treated quite well or even very well by management and by colleagues.

In a lot of organisations the real problem is not colleagues. Colleagues are often very supporting of other people who speak up. The problem is when different people in the management structure of an organisation react badly to what could be news that could be embarrassing, even if they're not directly responsible for whatever the problem is or whatever that perceived wrongdoing might be.



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AJ But in fact, a lot of organisations, a lot of the time, a lot of managers, a lot of leaders clearly listen and do manage people's whistleblowing quite well. Otherwise it would be much, much worse. People do blow the whistle successfully all the time, but very often the good outcomes can be by good luck rather than by good planning.

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AJ And what's really important is for organisations to be able to recognise the situations where it's more difficult and more complicated to support people where the nature of the wrongdoing makes it harder to investigate, or to look after the people who have spoken up about it.

And then what does an organisation need to do in order to deliver on the support and protection of those people? Rather than just running around going, we don't know what to do. We hope they'll be alright, but really there's nothing we can do.

That's not the case. Or just hope that there won't be a problem and hope that everyone will be able to look after themselves. And again, that's not the responsible thing to do.

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BS In your work you've spoken with lots of whistleblowers and those who work with them. What are some of the messages they had about what would have helped them?

AJ I think the crucial thing that people are looking for is support from within the organisation. And support needs to take a whole variety of forms, and it needs to come from the managers and leaders in the organisation. And it also needs to come from people who are independent of management, wherever that's possible within the organisation who are dealing with compliance or legal or HR or whatever.

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AJ And keeping a whistleblower informed as to what's going to happen and how a matter will be dealt with. Then keeping them informed as it is being dealt with is really crucial. Providing practical support so that if there has to be rearrangements in the workplace or that there's legal advice needed, or there's extra emotional support provision that's needed then the organisation should be ready to help meet the costs of those things, rather than saying you're on your own.

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AJ Being informed about the outcomes. And where people do make reasonable disclosures, where they've got a genuine concern that's reasonably held or just a suspicion or a concern that they're raising.

Then they need to know that the organisation agrees that yes, they've done the right thing and that even if it turns out not to be substantiated, or even if it turns out to be different from what they suspected or the solution might be different to what they anticipated, then the organisation needs to follow through on respecting the fact that they have done the right thing.

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AJ A lot of that is about communication and it's about emotional support as well as informational support. As well as about practical support. All the research shows that those things really make a difference. And that's without getting into avoiding undertaking detrimental action or reprisals or anything.

We're obviously talking about a situation where the organisation needs to find people who are not affected by the allegation. Who can look at it fairly and say, well what's fair in this situation?

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AJ And provide support to the people who have spoken up. Because otherwise the danger is that there will be nobody who is prepared to stand up for the whistleblower because of the people who are affected by, or potentially affected by the concerns about the wrongdoing.

BS And that message that speaking up, even if the allegation isn't necessarily sustained is something that the organisation appreciates and acknowledges.

AJ Absolutely. And every organisation, if you're going to put out the message to your staff that if you've got a concern you should speak up and if it's safe to speak up then you've got to honour that message.

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AJ You can't just pick and choose and say we'll support you because we like you, but for somebody else, no we're not going to support you even though it was a reasonably held concern. We're not going to support you because it's too hard.

Good leaders in any organisation need to recognise that their reputation, at the end of the day, as well as the reputation of the whole organisation, is going to depend on them being able to ensure that at the end of the day they acted fairly and justly.

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AJ And did that, not just based on their own immediate perception of the merits of individuals, but a slightly more objective assessment about how's the rest of the world going to look at this?

BS Because I guess that one of the elephants in the room is that there is an embarrassment factor when it comes to disclosures being made and implicitly criticisms being made about individuals or the organisation's behaviour?

AJ Almost always, at some level or other. And that's why I think good managers and good leaders knows that, if there's a problem then it should be flushed out and dealt with.

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AJ If that attitude is taken earlier, then it's more likely to be a manageable problem than if that attitude isn't taken and it's allowed to fester and get worse. And that things will be rectified and then we'll deal with it and move on.

That's one of the marks of a good leader in any organisation being prepared to say... Things do go wrong in organisations and sometimes, through no fault of anybody, mistakes get made and it's a question of dealing with them and dealing with them before they turn into even bigger problems than they need to be.

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BS If I could just turn to one more question. Can you give an example of where a whistleblower was well-handled and what that meant for the organisation and for the discloser?

AJ Certainly. A lot of the cases that we find out about through the research will never reach the public domain because they've been well-handled. But I think we know that in a whole lot of situations...

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AJ I can think of situations where people have revealed very serious wrongdoing including large scale frauds and all sorts of things, where the organisation has been able to either keep the matter confidential or ensure that it's dealt with in a proportionate way.

Even if it's come out internally at some stage obviously that it's being handled. Where they've made it clear to other staff that this employee who spoke up about it is being supported and that the organisation does have their back.

Not everybody has to like that person but this is the way we do things in this organisation. People have moved on. I can think of someone like Dennis Gentilin in the National Australia Bank from some years ago.

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AJ He blew the whistle and was well-supported by managers and colleagues. He blew the whistle on a 360 million dollar unlawful trading in foreign exchange amounts. A very serious matter.

Some people went to jail and a lot of people lost their jobs right up to the Chair of the whole company. But the organisation was mature enough, and he had enough support within the organisation that meant the organisation had to move on from that. He ended up continuing to work for the National Australia Bank for many, many years after that.

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AJ He's had very successful career and everybody has moved on. I think those sorts of cases show that when things are going wrong and people have to blow the whistle about it, it can be a very challenging time for an organisation.

The sooner the organisation gets on the front foot in dealing with it and the more that they don't let themselves get caught in a position where the whistleblower's been hung out to dry and has been made a martyr which only embarrasses the organisation even more and continues the damage to the organisation even longer.

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AJ Clearly the reverse of that is the ideal. Organisations can have a reputation for saying yes, we found things that were going wrong. We listened to our people. We've dealt with it. We've supported the people involved.

Everybody knows this is the way we deal with things in this organisation in a way that is fair and just and accountable to our stakeholders and makes us an employer of choice. Because people know they'll be fairly treated and that the organisation has their back if they speak up about things that are going wrong.

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AJ At the end of the day it can mean survival for an organisation and an ongoing very positive career for people where organisations really do take that responsibility and show that sort of leadership.

BS AJ, thank you very much for taking the time to speak with us today about this important issue.

AJ Thanks very much Bill.

BS Today's podcast has been about whistleblowers and whistleblowing with Professor AJ Brown. You can find other resources in relation to protected disclosures whether you're representing an organisation or you're an individual considering making a disclosure.

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BS If you go to the Registered Organisations Commission website www.roc.gov.au and there's a whistleblower tab on the front screen. Remember also that you can subscribe to our podcasts and to a range of other information resources that we have. Podcasts are available on Apple podcasts, Spotify, Soundcloud and YouTube.

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