Are We There Yet?

Whistleblowing Law Reform in Australia

A J Brown
Professor of Public Law, Griffith Law School
Gold Coast, Queensland, Australia
<table>
<thead>
<tr>
<th>Australian Government</th>
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<tr>
<td>Commonwealth Ombudsman</td>
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Second report:
*Whistling While They Work - A good practice guide for managing internal reporting of wrongdoing in public sector organisations*

*P. Roberts, A. J. Brown & J. Olsen, 2011*


**Required elements of an organisational whistleblowing program:**

1. Organisational commitment
2. Encouragement of reporting
3. Assessment and investigation of reports
4. Internal witness support and protection
5. An integrated organisational approach
Whistleblowing in the Australian Public Sector

Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations

edited by A J Brown

http://www.griffith.edu.au/whistleblowing
http://epress.anu.edu.au/whistleblowing_citation.html
Chapter 11.
Best Practice Whistleblowing Legislation for the Public Sector: The Key Principles

A J Brown, Griffith University
Paul Latimer, Monash University
John McMillan, Commonwealth Ombudsman
Chris Wheeler, Deputy NSW Ombudsman
The new/renewed key legislative ‘drivers’

• Better operational systems for more productive management of internal and regulatory whistleblowing, especially through strong lead agency support and oversight

• Statutory recognition of the role of public whistleblowing (i.e. disclosure to the general public, via media, in reasonable or exceptional circumstances)

• Practical remedies for public officials whose lives and careers suffer as the result of having made a public interest disclosure – especially compensation for damage flowing from organisational failures to act, support and protect.
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‘Leakers, whatever their motivation, serve the public interest’
- Laurie Oakes, Australian journalist
Protected Disclosures Act 1994 (NSW)

Disclosure to ‘journalist’ if first been made to either the agency concerned or a relevant regulatory agency, and:

• there had been either (a) a decision not to investigate, (b) a failure to complete an investigation within six months, (c) a decision not to take any action, or (d) a failure to notify the whistleblower within six months, whether or not the disclosure was to be investigated;

• the whistleblower had reasonable grounds for believing the disclosure was ‘substantially true’; and

• the disclosure was indeed ‘substantially true’.
Public Interest Disclosure Act 2010 (Qld), s.20

Public interest disclosure to a journalist, provided they have first taken it to an official authority – and that authority has:

- ‘decided not to investigate or deal with the disclosure’; or
- ‘investigated the disclosure but did not recommend the taking of any action’; or
- ‘did not notify the person, within 6 months [of the disclosure], whether or not the disclosure was to be investigated or dealt with’.

(At each disclosure, needs to ‘honestly believe on reasonable grounds’ the information shows or tends to show wrongdoing – s.12(3))
Public Interest Disclosure Act 2003 (WA) (proposed)
- cl.7A

public interest disclosure to a journalist, provided they have first taken it to an official authority – and that authority has:

• has ‘refused to investigate, or has discontinued the investigation of, a matter raised by the disclosure’; or

• has not completed investigation raised by the disclosure within 6 months of the disclosure; or

• has completed investigation but has not recommended the taking of action …
The PID Bill will protect public disclosures (including to the media):

(a) where:

(i) matter disclosed has previously been disclosed to the responsible agency and the integrity agency, or the integrity agency directly;
(ii) a serious matter;
(iii) disclosure not acted upon in a reasonable time, or the discloser has a reasonable belief that the response was not adequate or appropriate;
(iv) no more information than is reasonably necessary to make the disclosure is publicly disclosed; and
(v) the public interest in disclosure outweighs countervailing public interest factors (e.g. protection of international relations); OR

(b) where:

(i) discloser has a reasonable belief that a matter threatens substantial and imminent danger or harm to life or public health and safety; and
(ii) there are exceptional circumstances explaining why there was no prior disclosure internally (i.e. to the responsible agency) or externally (e.g. to the Ombudsman).
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# State of reform - Australian whistleblowing legislation

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* Some private sector coverage

NKTW: Not known to work