



Are We There Yet?

Whistleblowing Law Reform in Australia

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Whistling While They Work: Enhancing the Theory & Practice of Internal Witness Management in the Australian Public Sector

Australian Government

Commonwealth Ombudsman
Australian Public Service Commission
Charles Sturt University

Western Australian Government

Corruption & Crime Commission
WA Ombudsman
Public Sector Standards Commissioner
Edith Cowan University

Queensland Government

Crime & Misconduct Commission
Queensland Ombudsman
Office of Public Service, M&E
Griffith University

New South Wales Government

NSW ICAC
NSW Ombudsman
University of Sydney

Transparency International Australia

Australian Research Council

Victorian, ACT & NT Govts

Ombudsman Victoria
NT Comr for Public Employment
ACT Chief Minister's Dept
Monash University



Second report:

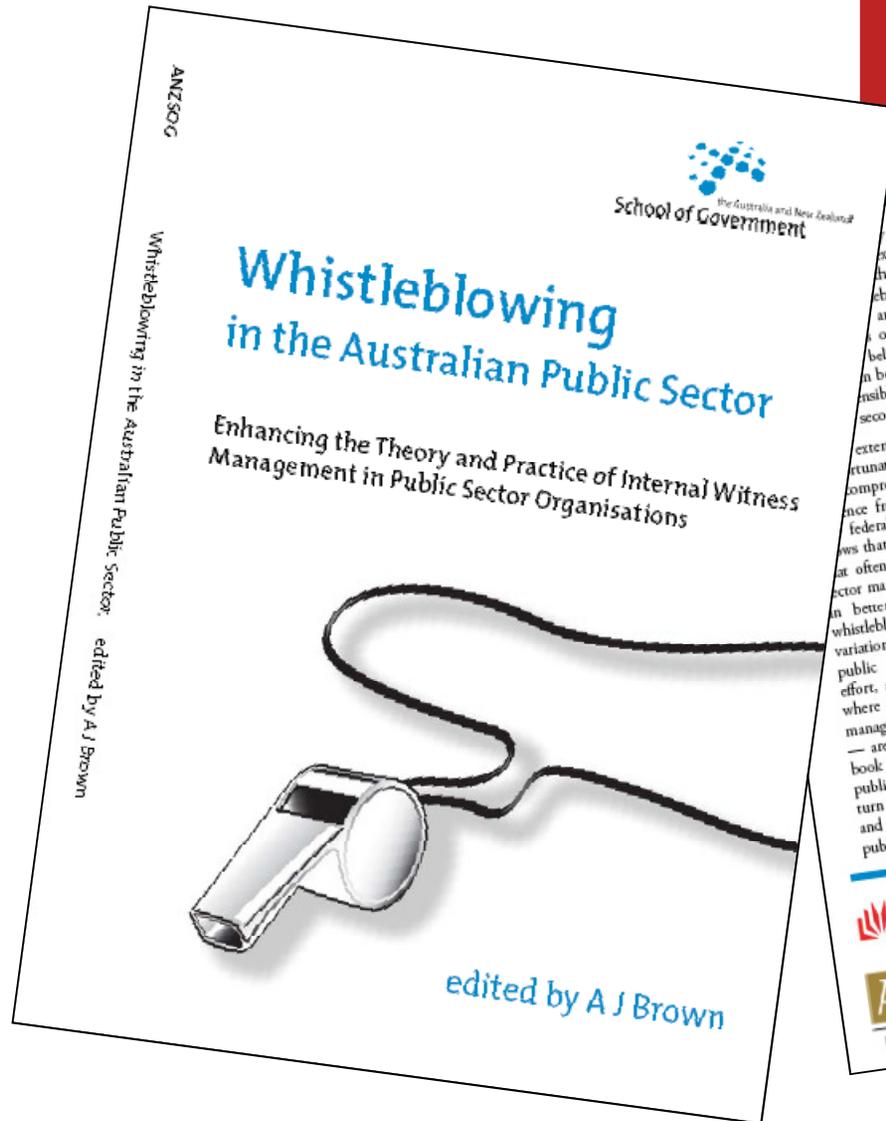
Whistling While They Work - A good practice guide for managing internal reporting of wrongdoing in public sector organisations

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

http://epress.anu.edu.au/whistling_citation.html

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



challenges in public sector management, few are as complex as the management of whistleblowing. Because the discovery and rectification of wrongdoing, public whistleblowing is widely acknowledged as being positive for public sector and society at large. However, the conflicts and tensions often associated with whistleblowing also support a strong belief that every whistleblower is destined to suffer, and that little can be done to protect them from reprisals. Even if they did, sensible employees are often seen as unlikely to ever blow the whistle a second time around.

Extensive research in this book reveals a more complex and, fortunately, more positive picture. The product of one of the world's most comprehensive research projects on whistleblowing, the book draws on evidence from over 8,000 public servants in over 100 federal, state and local government agencies to show how whistleblowers can and do survive, and why their role is highly valued. Public sector managers face significant challenges in better managing and protecting whistleblowers. There is great variation between the many public agencies making the effort, and the many agencies where the outcomes — for managers and whistleblowers alike — are still likely to be grim. This book is compulsory reading for all public sector managers who wish to turn this negative trend around, and for anyone interested in public accountability generally.



<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 ...



Commonwealth Government - March 2010

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

Juris	Reform	Orig	1. System	2. Public	3. Remedies
WA	2011?	2003	2?	2	NKTW
QLD*	2010	1994	2?	1	NKTW
NSW	2010, 2011	1994	1	2	NKTW
CTH	Waiting...	1999?	<i>Proposed</i>	<i>Proposed</i>	???
ACT	Soon	1994	NKTW	Missing	NKTW
VIC	Soon?	2001	1?	Missing	NKTW
SA*	2012?	1993	Missing	NKTW	NKTW
TAS	2009	2002	2?	Missing	NKTW
NT	--	2008	1?	Missing	NKTW
<i>Corps Act*</i>	Stalled?	2004	Missing	Missing	NKTW

* Some private sector coverage

NKTW: Not known to work