

[New research confirms](#) whistleblowers can't be protected until governments take a more comprehensive approach to law reform, even when individual organisations are making strong efforts.

As the first stage of our [Whistling While They Work 2 Project](#) we surveyed 702 public sector, business and not-for-profit organisations from Australia and New Zealand. The survey shows many organisations are advanced in their efforts to encourage employees to report wrongdoing, but also that basic rules need to change.

The vast majority (95.2%) of the 437 public sector organisations in the survey confirmed they had formal procedures or policies for staff to report wrongdoing. So did 86% of the 150 businesses, of all sizes and industries. And 71.3% of the 115 not-for-profit organisations surveyed.

This is the first time a systematic snapshot across all three sectors has been achieved. Indeed, it's the largest number of organisations believed to have participated in a single study of this kind, worldwide.

However over a fifth of all organisations indicated that despite encouraging reporting, they did not currently have any strategy, program or process for supporting and protecting the staff who raised concerns. This included a third (33%) of all business and not-for-profit respondents.

Half of business and not-for-profits (49% and 51% respectively) also said they did not assess the risks of the detrimental impacts staff might experience from raising wrongdoing concerns.

While many organisations are trying, and probably even succeeding, we now know that most need better guidance, incentives and regulation to lift the number and quality of these whistleblowing processes.

While most organisations provide a range of standard supports to staff who report, less than

half of organisations take any extra steps. Only 39% of businesses and 32% of not-for-profit organisations (46% of all organisations) in the survey provided whistleblowers with access to a management designated support person as part of their response.

Perhaps most alarmingly, only 17% of businesses, 17% of public agencies and 13% of not-for-profits (16% of all organisations) in the study have a mechanism for ensuring adequate compensation or restitution. This is if staff do experience reprisals or other detriment after whistleblowing.

Instead - even in the public sector, where compensation mechanisms have been broader and longer-standing - organisations are instead more likely to promise disciplinary action against anyone responsible for reprisals.

These results confirm a huge challenge in Australian laws.

Where laws do protect whistleblowers, they tend to criminalise reprisals. This creates a very high legal bar before anyone is prepared to accept the employee deserves apologies, compensation or restitution for problems they suffer.

For example, under [the Life Insurance Act 1995](#) , any whistleblowers like the [Commonwealth Bank's Dr Benjamin Koh](#) , can only access compensation, if a criminal reprisal against them is first proven.

But this is incredibly hard. In NSW, the Independent Commission Against Corruption found that State Emergency Services Commissioner, Murray Kear, had engaged in a reprisal by sacking his deputy commissioner - at least in part due to her public interest disclosures. But the criminal prosecution failed.

Compensation avenues that do not rely on this kind of bar clearly need a much higher priority both in law, and procedures.

Our research also shows how organisations can be far ahead of the law and indeed frustrated by it. For example, at the moment the narrow protections for whistleblowers in Australia's Corporations Act do not even apply to anonymous reporters, if identified later.

Yet under their own processes, 79% of private sector businesses in our study (76% of all organisations) indicated they do accept and act on anonymous concerns.

So far, the few protections enacted or proposed for the private and not-for-profit sectors are piecemeal and potentially inconsistent. There are a few protections in the Corporations Act for breaches of corporations law, some in the banking and life insurance Acts for those industries, and others [on the cards](#) for tax whistleblowing.

But 87% of businesses indicate their reporting procedures are not that narrow or specific, and apply to a similarly broad spectrum of wrongdoing as in the public sector. This includes fraud, corruption, abuse or mistreatment of customers, and health, safety and environmental dangers.

The time has never been better for a comprehensive, streamlined approach, rather than piecemeal extension in different regulatory areas. Fortunately there are some steps towards this.

Recently the Turnbull government flagged [a wider review of Australia's corporate whistleblowing laws](#) as the first item in its draft national action plan.

This is a historic step, given the recommendations of many parliamentary committees and other reviews, over the years.

However, if Australia's laws are to support the scale and diversity of organisations' existing efforts to use whistleblowing as a tool of good governance, our research shows they indeed need fundamental reform. Fortunately there are plenty of businesses and not-for-profits already contributing their experience to this process – and indeed, leading the way.

Despite business' best efforts whistleblowers still lack protection under Australian law: new research

Written by The Conversation

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Read more <http://theconversation.com/despite-business-best-efforts-whistleblowers-still-lack-protection-under-australian-law-new-research-66910>