

## Whistleblowing: legislation is just part of the picture

**As stories about whistleblowing and its consequences dominate international headlines, work is underway to review New Zealand's whistleblowing legislation. Chief Ombudsman Peter Boshier sets out the nuts and bolts of the Protected Disclosures Act 2000, and why we need to lift our game in both awareness and practice.**

New Zealand was one of the first countries in the world to introduce legislation that protects people who report concerns of serious wrongdoing in their workplace. The Protected Disclosures Act 2000 had a twofold purpose: to encourage and enable people to come forward about serious wrongdoing at work, and to ensure they were protected from any repercussions for doing so.

In the years since, some significant wrongdoing has been exposed. Just two examples are the benefits investigator who himself committed \$36 000 worth of benefit fraud, or the government office supplier who fudged its books to overstate profit by nearly \$350 million. Both these cases of wrongdoing came to light thanks to whistleblowers.

Our most recent high-profile case in New Zealand involved a manager at the Ministry of Transport who defrauded the agency of nearly \$750 000 over four years. In this case, while several colleagues had confidentially raised their concerns, the behavior wasn't formally detected until contact was made by the Australian Police.

In addition, a review of the Ministry of Transport case found that the whistleblowers were later disadvantaged by the timing of their redundancy from the Ministry.

It's apparent that, nearly two decades after its introduction, the Act isn't working as well as it could and it should, for either employees or organisations.

Research led by Australia's Griffith University in 2017<sup>1</sup> assessed employees' perceptions and understanding of whistleblowing in ten Australian and New Zealand public sector jurisdictions (New Zealand counted as one jurisdiction). We were rated just eighth out of ten.

And my own research through independent company UMR in April this year revealed disturbingly low public awareness of the Act.

Twenty one percent of those surveyed said they'd witnessed serious wrongdoing at their current or former workplace—yet only nine percent were aware of the Protected Disclosures Act. Fewer than half (40 percent) felt their jobs would be safe if they reported serious wrongdoing. One positive finding was that among those who *did* know about the PDA, considerably more (62 percent) felt their job would be safe if they spoke out.

Reform is clearly needed, but is just part of the picture. While the Act requires public sector organisations to have a disclosure process for employees, **all** organisations, public or private, need to take responsibility for ensuring their culture and procedures support employees to raise concerns.

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This report can be cited as: A J Brown and S A Lawrence (2017), *Strength of Organisational Whistleblowing Processes: Analysis from Australia & New Zealand. Further results of the Whistling While They Work 2 Project*, Griffith University: Brisbane, July 2017.

In our research this year, the vast majority of those we surveyed—nearly eighty percent—said they would prefer to report serious wrongdoing to their employer in the first instance.

If people are unaware of the protections available to them, or don't feel confident raising their concerns, serious wrongdoing will go undetected.

Under the Act, special provisions enable me as the Ombudsman to review, guide and direct any public sector organisation that's carrying out an investigation of a protected disclosure. I'm one of the 'appropriate authorities' that can receive disclosures directly and investigate them--see the definitions below—and I provide guidance to organisations and to employees about handling and making protected disclosures.

I encourage you to check out the guidance on my website: for employees - [How to make a protected disclosure](#), along with a [Checklist for disclosers](#); for organisations - [Guidance on internal policies and procedures for organisations](#).

The State Services Commission has produced [Speaking Up Standards](#) to support effective reporting in state services organisations. And the Griffith University-led research project has lots of resources, including a [Five-step guide to better whistleblowing practice in business and government](#).

Insiders are usually the first to know about serious wrongdoing in the workplace. Every worker in New Zealand needs to know they can approach their employer in safety and confidence with a protected disclosure. They should be confident that that their disclosure will be taken seriously, appropriate action will take place, and they won't be punished for bringing the matter to light. Our reputation as an honest society free from corruption depends on it.

### **Unpacking the PDA**

While the Protected Disclosure Act is currently under review, its fundamentals will likely remain the same. Here are some of the key terms of the Act.

**Protected disclosure** is a confidential reporting of serious wrongdoing in the workplace—commonly known as whistleblowing

**Protected** means your disclosure will be kept confidential, and you'll be protected from civil and criminal proceedings and from disadvantage in the workplace

**In some exceptional circumstances** protection and confidentiality don't apply; see the [Ombudsman's guidance](#) for detail

**Serious wrongdoing** under the Act means conduct that poses a serious risk to public health or safety, the environment, or the maintenance of law, or that is an offence. In the public sector, serious wrongdoing also includes the unlawful or corrupt use of funds, and conduct that is discriminatory, oppressive, or grossly negligent, or that constitutes gross mismanagement. It doesn't cover minor infringements, or issues covered by the Employment Relations Act.

**An employee** under the Act is a current or former wage or salary earner, a contractor, a secondee, a manager, or a volunteer; all can make a protected disclosure

**An 'appropriate authority'** is an external agency that a protected disclosure can be escalated to. Appropriate authorities under the Act include the Auditor-General, the Ombudsman, the Director of the Serious Fraud Office, and the State Services Commissioner, as well as the head of every public sector organisation.

Any more questions? [Contact the Ombudsman](#)