

Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

Massey University Library
New Zealand & Pacific Collection

**The Emergence of Whistleblower Protection
in New Zealand: An Exploratory Study**

A thesis presented in partial fulfilment of the requirements for the degree
of Master of Business Studies in Human Resource Management
at Massey University, New Zealand.

Vincent Gerard McErlane

1995

342 93068028
MCE

x20

ABSTRACT

The address of wrongdoing in society is seen as an important goal of government. Yet uncertainty exists as to the most effective and appropriate means to achieve this goal. One recent method that is believed to assist in this is the encouragement of whistleblowing through protective legislation.

Leading this development has been the United States of America, with more recent legislation enacted in various jurisdictions in Australia. As a result of recent events here in New Zealand, whistleblower legislation has been proposed.

In the present study, a broad examination of the research literature on whistleblowing is presented. This examination provides a foundation whereby legal mechanisms of whistleblower protection in the United States and Australia are examined. Having identified these jurisdictions' more notable points, the New Zealand Bill is considered.

Analysis of New Zealand's existing and proposed mechanisms of protection are highlighted and compared with overseas' protections. Findings from this comparison identify significant strengths and weaknesses inherent to the Bill. In particular, this study finds that the New Zealand Bill is likely to suffer from the same shortcomings as those experienced in the United States and Australia. In response to these shortcomings, the study turns to focus on internal mechanisms that may be employed at the organisational level.

This exploratory study provides a solid frame of reference in analysing the emergence of whistleblower protection in New Zealand, and lays the foundation for more extensive research to be conducted in the future.

PREFACE

*It is necessary only for the good man [sic] to do nothing
for evil to triumph.*

(Burke, cited in Partington, 1992, p. 160)

ACKNOWLEDGEMENTS

Where does one start? No work of this type or at this level is ever done in isolation without the help, advice and encouragement of the people who make it all worthwhile. First and foremost I would like to thank my supervisor Bev Marshall for her continued support and assistance throughout the year. The many times that I have sought answers to my queries and have received both sound and common sense replies has not been forgotten. I would also like to thank my advisor Professor Philip Dewe for his humour and guidance in producing a 'seminal' piece of work as he so often puts it.

Special thanks are also due to my secondary advisors Fiona Stenhouse and Glyn Jeffrey for guiding a blind man through the legal minefield of employment law issues. Many thanks are also owed to Dr Andrew Brien of Massey's Philosophy Department who unselfishly spent a great deal of time with me explaining the philosophical issues and implications behind the subject area. I would also like to acknowledge all of the staff in the Department of Human Resource Management at Massey University, especially Nicole, Jacqui and Karlos for their unfailing support and numerous remarks about the non-existence of my love and social life. Their jokes and tricks will be long remembered as I embark on life in the 'real world'.

I would also like to thank the many 'expert' contributions and conversations I've had with practitioners and academics. They have given credibility and substance to my work and are especially recognised in Appendix A at the back of this study.

Thanks also to all of my flatmates who have put up with my clunking round in the wee hours of the morning in an effort to dowse my insatiable hunger. An amazing support crew that have been with me from go to whoa on this one. I

won't forget it! Thanks are also due to my extended whanau of friends from the Valley, the Bay, Town, and of course Palmy. You've all clarified in my mind the true meaning of what 'good friends' are. To my proof reader extraordinaire, Merie, your patience has been my saviour.

In review, the task that lay before me was indeed a difficult one, not only because of the nature of the subject area, or its recency and unresearched state in Aotearoa/New Zealand, but also due to the difficulty of obtaining information for comparison of which much lay overseas. This challenge felt extremely off-putting on many occasions, but if I can subserviently borrow from the words of my favourite poet, Robert Frost, 'taking the road less travelled by has made all the difference'.

Lastly I would like to show my appreciation for the tremendous support that my family has given me, especially my father and mother. The last few years have been difficult ones and having someone help and show you how to carry your own cross has provided a hidden strength in me I didn't know existed - thank you.

However I would like to dedicate this work to our society's victims. Blowing the whistle takes great courage whether protected or not. Reform is never easy but neither is anything that's worthwhile. So in order to change the injustices of the world we must first change ourselves.

TABLE OF CONTENTS

Abstract	i
Preface	ii
Acknowledgements	iii
Table of Contents	v
List of Abbreviations	viii
List of Tables	ix
List of Figures	x
Chapter One: Introduction	1
Chapter Two: Whistleblowing: Its Theoretical Foundation	5
2.1 Introduction	5
2.2 Definition of Whistleblowing	7
2.3 The Legal Approach to Defining Whistleblowing	10
2.4 The Employment Relationship	12
2.5 Forms of Whistleblowing	14
2.6 A Model of Whistleblowing	15
2.7 The Status of New Zealand's Research Base on Ethics	26
2.8 Justification of Analysis	28
Chapter Three: New Zealand's Historical and Contemporary Ethical	
Context	32
3.1 Introduction	32
3.2 Historical Overview	32
3.3 The Contemporary Context	37
3.4 Cases of New Zealand Ethical Misadventure and Whistleblowing	40
3.5 The Neil Pugmire Episode	45
3.6 Identification and Analysis of the Main Ethical and Whistleblowing Issues to Emerge	48

Chapter Four: Why Protect Whistleblowers? Issues of Retaliation, Intimidation and Harassment	52
4.1 Introduction	52
4.2 Consequences of Whistleblowing	54
Chapter Five: Whistleblower Protection in the United States of America	65
5.1 Introduction	65
5.2 The Federal Approach	67
5.3 The State Approach	73
5.4 Alternative Approaches to Whistleblower Protection in the United States	78
5.5 Conclusion on the Legal Protection offered to Whistleblowers in the United States	82
Chapter Six: Whistleblower Protection in Australia	88
6.1 Introduction	88
6.1.1 Recent Australian Cases	89
6.2 The Contemporary Context	92
6.3 Legislative Activity	95
6.3.1 Legislative Activity at the Federal Level	97
6.3.2 Whistleblower Protection in Queensland - Interim Provisions	100
6.3.3 South Australia - Whistleblowers Protection Act of 1993	107
6.3.4 Protection in the Australian Capital Territory - Latest Developments	115
6.4 Conclusion of the Legal Protection offered to Whistleblowers in Australia	117

Chapter Seven: The New Zealand Approach to Whistleblower Protection	120
7.1 Introduction	120
7.2 Legislative Activity	121
7.3 Address of Information Disclosure	125
7.4 Is There a Need for Whistleblower Protection?	130
7.4.1 The Call for Whistleblower Protection	147
7.5 Review of the Whistleblowers Protection Bill	149
7.5.1 Part I -Preliminary Provisions	149
7.5.2 Part II -Disclosure of Public Interest Information	152
7.5.3 Part III -Whistleblowers Protection Authority	157
7.5.4 Part IV -Procedures	159
7.5.5 Part V -Remedies for Injury to Protected Informants	162
7.5.6 Part VI -Miscellaneous Provisions	166
7.6 Conclusion on the Whistleblowers Protection Bill	167
Chapter Eight: Alternative Approaches to Whistleblower Protection	172
8.1 Introduction	172
8.2 Legal Considerations	174
8.3 The Environment, Culture and Climate for Whistleblowing	179
8.4 Internal Mechanisms of Whistleblowing	184
Chapter Nine: Conclusion	192
9.1 Summary	192
9.2 Directions for Future Research	199
References	201
Appendices	222
Appendix A: Personal Communication for Study	222
Appendix B: The Whistleblowers Protection Bill 1994	224

LIST OF ABBREVIATIONS

ACEA	Association of Consulting Engineers Australia (Australia)
CHE	Crown Health Enterprise (NZ)
EARC	Electoral and Administrative Review Commission (Queensland, Australia)
EEC	European Economic Community
FM	Focal Member
IDPP	Internal Disclosure Policies/Procedures
MSPB	Merit Systems Protection Board (United States of America)
OECD	Organisation for Economic Cooperation and Development
OSC	Office of Special Counsel (United States of America)
PBA	Political Behaviour Alternative
PEARC	Parliamentary Committee for Electoral and Administrative Review (Queensland, Australia)
QC	Queen's Counsel
RDH	Royal Darwin Hospital (Northern Territory, Australia)
US	United States (United States of America)
WPA	Whistleblowers Protection Act

LIST OF TABLES

Table Name	Page
-------------------	-------------

4-1 Potential Costs and Benefits of Whistleblowing and Inaction	57
---	----

LIST OF FIGURES

Figure Name	Page
2-1 A Model of Whistleblowing	17, 18
2-2 Stage Two of the Whistleblowing Process	21
4-1 Short-term and Long-term Outcomes of Whistleblowing	56
