

# Acting for You



**Judith Fox, National Director, Policy & Publishing**

## Whistleblowing — Governance Institute backs national project

Governance Institute has partnered with Griffith University and other major universities in a new national research project aimed at improving the management of internal reporting of wrongdoing across the private and not-for-profit sectors. Independently funded by the Australian Research Council, it involves four universities and is the most comprehensive study of whistleblowing processes yet undertaken in Australia or internationally.

The project is called *Whistling While They Work 2: Improving managerial responses to whistleblowing in public and private sector organisations*. In recognition of the importance of the research, and the interrelation of strong whistleblowing policies and processes with corporate culture, the Australian Securities & Investments Commission (ASIC) has publicly supported the research project — it has written to 30,000 companies inviting them to participate in it.

The research project involves two surveys. The first involves asking managers about their attitude to whistleblowing and separately asking employees what they think. This will assist organisations to pull together the suite of their approaches on this issue. It could also reveal whether there is any disjunction between the protections in place for whistleblowers within organisations and whether employees consider these to be sufficient to provide for speaking up if they observe wrongdoing.

The survey also allows members to indicate their organisation's interest in participating in greater depth, through the next phase of the research: [Integrity@WERQ](mailto:Integrity@WERQ). This phase will contribute to greater knowledge of how organisations' processes and procedures are actually working, and provide a unique opportunity for organisations to directly benchmark their current policies and their performance.

In 2009, the Federal Government released an options paper, *Improving Protections for Corporate Whistleblowers*, to explore options to amend the *Corporations Act 2001* and reduce disincentives for potential whistleblowers in the private sector. The current provisions are generally accepted as having limitations. However, following consultation on an options paper and the convening of Roundtables, there was no further action. The *Public Interest Disclosure Act 2013* came into effect for public officials in the Commonwealth public sector with the assurance that protections are provided to public officials who make qualifying public interest disclosures. The research project currently underway will be of vital importance in shaping the future regulatory framework in relation to whistleblowing in the private and not-for-profit sectors.

Ensuring that employees and others have safe channels through which to raise wrongdoing concerns, and that organisations are well equipped to address them and to protect those who raise them, are vital elements of good governance and integrity. Governance Institute has invited all members to participate in the survey — we strongly encourage you to participate in both phases of the research, commencing with this initial survey of your organisation's processes and procedures.

The survey can be accessed at [www.whistleblowing.edu.au/survey](http://www.whistleblowing.edu.au/survey) and is open until 30 June 2016. Further information on the project as a whole can also be found project website, [www.whistlingwhiletheywork.edu.au](http://www.whistlingwhiletheywork.edu.au)

## Penalties for white collar crime

Whistleblowing is one aspect of managing corporate wrongdoing. An analysis of penalties under ASIC-administered legislation is another.

In the wake of the global financial crisis, a significant policy debate is unfolding regarding the adequacy and effectiveness of penalties imposed by courts and other bodies under legislation administered by financial regulators such as ASIC. It is important for ASIC as a regulatory agency, for the Commonwealth Government that funds that agency, for business and for the Australian community who depend on that agency, that penalties create the appropriate incentives for compliance by those whose activities are regulated by ASIC. This is critical to ASIC achieving its statutory objectives of promoting the confident and informed participation of investors and consumers in the financial system and maintaining, facilitating and improving the performance of those in the financial system. There must, therefore,

be regular evaluation of ASIC's penalties system.

Governance Institute has invited all members to participate in research being undertaken by the University of Melbourne's Centre for Corporate Law & Securities Regulation. The key aims of the project are to determine whether adequate penalties are available to ASIC; whether those penalties are administered effectively; and how ASIC's penalties regime could be improved. It is important that our members' views are heard on whether the penalties for corporate and financial wrongdoing in Australia are adequate and effectively administered.

The research will shape recommendations to government, ASIC and other key stakeholders on the enforcement of corporate and financial laws in Australia. The survey is only open until Friday, 13 May 2016, so please act now to contribute to this important policy debate. The survey can be accessed at [www.surveymonkey.com/r/penalties-for-corporate-and-financial-wrongdoing](http://www.surveymonkey.com/r/penalties-for-corporate-and-financial-wrongdoing).

### Shareholder primacy: Is there a need for change?

As part of Governance Institute's mission to promote and advance the effective governance of organisations in the private and public sectors, we are committed to bringing ideas to the table that contribute to Australia's governance framework. A strong governance framework facilitates a strong economy. Our thought leadership plays a vital role in supporting our mission.

In 2014 we issued a discussion paper to provide a framework for discussion and stimulate debate on the question of whether shareholder primacy should remain the guiding principle for boards in their decision-making. The paper, *Shareholder primacy: Is there a need for change?* examined the misalignment that is often experienced between societal expectation and the impact of corporate activity. The paper queried whether the explicit objectives of a company should be solely about shareholders; whether the current law

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constrains a broader view of the best interests of the company; whether a wider view in law is required; and whether greater certainty is required as to the operation of the law in regard to shareholder primacy.

This issue has now become mainstream — it is being discussed on a daily basis. The current debate about tax minimisation (or avoidance) that dominates the media is part of the discussion about shareholder primacy. As noted in our discussion paper, companies will seek to minimise tax payments to maximise value for shareholders. However, communities are of the view that corporations should pay for the many years of employee productivity, and use of public infrastructure and public research that assisted in building their industries, and that companies should therefore pay full taxation.

The term 'social licence to operate' now has prominence, with the prime minister employing it when giving a recent speech in response to manifold concerns about culture in the banking industry and whether financial institutions are putting profit before customer needs. As our paper notes, 'The term social licence draws attention to the difference between a legal permit and the social acceptance or legitimacy that is essential for companies to be able to survive, prosper and ultimately be part of communities that advocate for and support [their] interests.'

Even *The Economist* has weighed in, with a recent article exploring the criticism that corporations should be run for all stakeholders, not just

shareholders. It notes that, 'In a trite sense the goals of equity-holders and others are aligned. A firm that sufficiently annoys customers, counterparties and staff cannot stay in business. But it is disingenuous to pretend conflicts do not arise. A firm with a loss-making factory cannot shut it without destroying jobs' — the latter is another issue explored in our paper.

*The Economist* article argues that shareholder value — properly defined — will remain the governing principle of firms, but also notes that shareholder value is not the governing principle of societies. Corporations operate within rules set by governments on behalf of society.

This is an issue that will remain open for debate. We encourage you to read our paper, which can be downloaded at [governanceinstitute.com.au/advocacy-research/thought-leadership/shareholder-primacy-is-there-a-need-for-change/](http://governanceinstitute.com.au/advocacy-research/thought-leadership/shareholder-primacy-is-there-a-need-for-change/). Be part of the discussion ■

### Recent advocacy activity

#### Submissions

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A discussion paper — 5/4/16