

# THE NATIONAL LAW REVIEW

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## Rewards and Protections May Soon Be Available to Australian Qui Tam Whistleblowers

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When Australia's Parliament reconvenes after its September 7 federal elections, Nick Xenophon, an independent Senator representing South Australia, plans (if he is reelected) to introduce legislation designed to strengthen his country's corporate whistleblower laws, according to the Sydney Morning Herald. The legislation is planned to be styled after the [United States' False Claims Act](#), which allows for private citizens and organizations to bring suit [on behalf of the government](#), share in any recovery, and benefit from [significant legal protections](#) afforded to those who blow the whistle.

False Claims Act-like legislation in Australia—an approach supported by the Tax Justice Network and one for which the Australian Federal Police Association has advocated since 2010—would help remedy defects in Australia's Corporations Act. Currently, Part 9.4AAA of the Corporations Act provides certain safeguards to some whistleblowers (corporate officers, corporate employees, corporate contractors, and employees of corporate contractors), but the Sydney Morning Herald reports that it does not extend protection to a number of categories of whistleblowers, including employees of small businesses and partnerships, and companies' business partners. Without [safeguards](#) like those afforded to False Claims Act whistleblowers in the United States, whistleblowers in Australia remain subject to retaliation by companies whose fraud they bring to light.

Independent accounts of fraud against the government in Australia reported on in the Canberra Times estimate significant sums of money are lost to fraud on an annual basis. The Australian Institute of Criminology, for one, has estimated that nearly \$500 million in fraud was committed by third parties against the national government for the years 2009 to 2010 and that less than \$200 million of that number was recovered. Other measures might yield significantly higher totals in Australia. The Association of Certified Fraud Examiners approximates that five percent of government spending is lost to fraud annually; with Australia's federal outlay of \$375 billion in the current financial year, the total lost to fraud could be nearly \$19 billion.

If Australia enacts legislation similar to the False Claims Act, it would follow other recent legislation encouraging whistleblowing in that country. In July, the Public Interest Disclosure Bill was signed into law, which, according to the Wall Street Journal, protects whistleblowers who reveal wrongdoing—such as financial abuses or safety lapses—*within* the Australian government. Although a positive measure, the most significant step Australia could take toward remedying (and preventing) fraud against its federal government would be to enact legislation comparable to the American False Claims Act targeted at fraud carried out by private actors.

Whatever the amount of money lost to fraud, it stands to reason that fraud against the government could be as problematic in Australia as it is in the United States. Of the money actually recovered by Australia in the years 2009 and 2010, the Canberra Times reports that almost half was tied to fraud on federal aid programs such as Australia's version of Medicare and social security. The other half is likely attributable to [banking fraud](#), government contract fraud, [tax fraud](#), and other corporate fraud. Just as corporate and [Medicare](#) whistleblowers in the United States have helped the government recover money, an effective False Claims Act-like law in Australia could provide private citizens and [qui tam](#) attorneys worldwide with the ability to do the same.



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