

# Key Benchmarking Themes - Internal Witness Management Systems in the Australian Public Sector

A J Brown, Canberra, 12 July 2005

The following list of key themes raised at the 12 July Symposium was presented at the conclusion of the Symposium and will be used to inform the design of Survey 0 (Agency Practices & Procedures) as well as broader comparison and evaluation of the different systems used by agencies.

## Macro Issues

### 1. Legal frameworks for whistleblower management and protection

Question of what is the right or best framework needs to be answered not just as a 'stand alone' question but with a view to ensuring these are integrated with old, existing or new integrity systems, investigation systems, processes etc rather than duplicating, confusing or smothering those systems.

### 2. Central agencies' supervising and coordinating roles

Relative consensus that we are not talking about central investigation & public sector management agencies taking on all responsibility for whistleblower protection, nor all such responsibilities lying with line agencies, but an effective relationship that involves both. What should be the respective roles of both, and when should each be involved by the other, become the key questions.

### 3. Internal schemes

Focus is on the internal strategies used by agencies to respond to and manage disclosures, within these legal frameworks and central relationships... but recognising the need for clearer distinctions to be drawn between (a) internal reporting and investigation systems, and (b) internal support, management and protection systems. While interrelated, these are two different things and at times need to be quite independent of one another.

## Internal Reporting and Investigation Systems

Six key themes were highlighted during the day. The discussion suggested that the presence of these characteristics were important complements/prerequisites for effective internal witness management systems to operate:

### 1. Clear reporting requirements

The need for awareness and clarity among staff and managers that employees are under a moral/professional/legal duty to report suspected wrongdoing, and clarity as to what these requirements involve.

### 2. Clear reporting systems

Staff knowledge and clarity regarding how to report, and to whom, including hotline systems (and including external service providers where appropriate/useful); with a very strong need for alternative reporting conduits so that staff know they can legitimately report either to their supervisor or elsewhere up their chain of command or via internal processes that bypass/parallel the chain of command.

### **3. Clarity about external as well as internal reporting processes**

i.e. that it is equally legitimate to report to Ombudsman, anticorruption agencies etc. Also a need to ensure realistic expectations regarding how external and internal investigation processes may interrelate (e.g. that matters reported externally may need to be referred back for internal investigation).

### **4. Investigative competencies**

Recognition that these seriously affect whether agencies really have the capacity to handle whistleblower cases properly, including use/abuse of natural justice principles, etc.

### **5. Reprisal investigation competencies**

Recognition that this is a specific area of investigative competency, requiring particularly special attention if reporting systems are to have credibility.

### **6. Confidentiality**

A key theme throughout the day was the absolute importance of the careful management of information regarding the identity of internal witnesses and content of their disclosures, if reprisal risks are to be contained and minimised and the agency to retain an appropriate sense of proportion regarding any given matter (e.g. dealing with the issue rather than focusing on the messenger).

## **Internal Whistleblower/Witness Support, Management and Protection Systems**

Fourteen key elements were highlighted during the day as potentially important or decisive features of effective systems:

### ***Relationships with existing management systems***

#### **1. Embedded in management**

Potentially good systems appeared to be understood, supported and used by line managers rather than being some secret or independent process. E.g. area managers being an active point of referral of internal witness cases to the support service.

#### **2. Do not displace managers' responsibilities for staff**

Support systems supplemented and helped oversight and support line managers' responsibilities for the supported staff, rather than replacing their responsibilities. E.g. line managers retain formal responsibility for threat assessments, issues of workplace health and safety, personal conduct of other staff towards alleged or known whistleblowers etc.

#### **3. Devolved operation through designated mentors/support officers**

Other managers/staff in the workplace take on further official responsibility to help manage the case, supplementary to chain of command, and this is understood and accepted.

### ***Program scope, focus and comprehensiveness***

#### **4. Staff awareness of program**

Staff need to know program exists and understand its relevance, if they are to access it and if its existence is to function to assist the reporting climate generally; education and publicity regarding general work of the program.

#### **5. Program operates proactively/preventatively**

Perhaps the single most important feature of program. Staff with any significant likelihood of needing support (which is most) become known to or come within the support system as early as possible (i.e. at or soon after point of disclosure), before problems, tensions, reprisals or believed reprisals arise. Fears, risks and any actual repercussions managed proactively or as they occur rather than ex post facto.

#### **6. Deals with official and unofficial reprisals**

Purpose of program is not simply to protect staff from other individual staff (e.g. persons targeted by disclosures, other disgruntled staff), but also the more complex and political task of acting as institutional advocate/supporter of the whistleblowing process, and thus help prevent inadvertent/negligent management reprisals against individual whistleblowers (e.g. when management might otherwise be tempted to find it easier to discredit the disclosure than investigate or remedy the problem; or where matters become public and there is increased risk of embarrassment, conflict etc escalating).

#### **7. Case assessment procedures and competencies**

Recognition that internal disclosure systems will attract the full range of disclosures regarding alleged wrongdoing spanning from pure private grievances, through private grievances with indirect public interest content, to public interest disclosures with inevitable mixed motives...etc. Also full range from mere suspicion which is accurate/inaccurate, to well researched or evidenced allegations which are accurate/inaccurate. Internal witness support systems need to be able to apply in potentially any such cases but with clear means of prioritising etc on basis of need.

#### **8. Exit considerations**

Good systems include a focus from the point of entry of individuals onto the program, on a point of positive exit when active support is no longer required, enabling staff to get on with their careers, with organised follow-up wherever appropriate, and including recognition mechanisms.

### ***Organisational and institutional factors***

#### **9. Dedicated resources**

No program exists without some level of dedicated resources (e.g. staff), commensurate to size of organisation, internal witness caseload and contextual needs. Query what systems can be provided externally or cooperatively for agencies under resource constraints.

#### **10. Experienced staff**

Ability of program to deliver effective case assessment, support, counselling, tactical advice, recognise and deal with reprisal risks, negotiate with line managers and senior managers, etc all necessitates careful selection of very experienced staff.

**11. Separation from investigative functions**

Effective systems appear to be based in central organisational areas delivering HR and other employee support, rather than internal investigation areas, with a high-level reporting channel direct to senior management group/CEO to enable clear, direct and rapid advice and action when problems arise.

**12. External &/or stakeholder evaluation**

Vital to have ongoing research program, validated by external experts and/or stakeholder involvement, monitoring the performance of the program (including direct measurement of outcomes for internal witnesses as well as awareness, satisfaction etc).

**13. External institutional support**

Existence of advisory & oversight mechanisms e.g. advisory council or group, including stakeholders such as integrity agency reps, unions, relevant public interest or client groups, to provide ongoing advice on program, ensure problems are identified and solved, and ensure program continues to exist.

**14. Support from the top**

Senior management / CEO / board need to recognise importance of program and continually reinforce and support, for program to have credibility and effectiveness.

## A Typology of Whistleblowing: By Basis/Nature, Likelihood of Personal Grievance Involvement, & Investigation Method

A J Brown, Griffith University – Internal Witness Management in the Australian Public Sector, Canberra, 12/7/05

### Basis or Nature of Disclosure/Evidence

Personal Grievances / Workplace Management <small>(inc. poor personnel practices, breach of merit &amp; equity, allowances, workplace favouritism, discrimination, harassment, bullying)</small>			Personal Incompetence &/or Misconduct				Organisational Malpractice			‘High Policy’ isputes	
1	2	3	4	5	6	7	8	9	10	11	12
Purely personal grievance	Repeat/ systemic workplace behaviour left unchecked, affecting core business / clients	Repeat/ systemic personnel maladmin affecting core business / clients	Personal incompetence by staff, affecting core business / client service  (minor to major)	Personal misconduct <b>A</b> (material) (e.g. theft, fraud) (inc. personnel fraud e.g. false claims)  (minor to major)	Personal misconduct <b>B</b> (interpersonal) (e.g. abuse of position re: client/ dependent)  (minor to major)	Personal misconduct <b>C</b> (organised criminal) (e.g. bribery, conspiracies to commit A or B)  (minor to major)	Systemic incompetence, procedural & legal flaws/ breakdowns, affecting core business / client service  (within control of management)	Systemic incompetence, procedural & legal flaws/ breakdowns, affecting core business / client service  (dictated by external factors)	Immoral, socially harmful &/or dishonest conduct procedures/ policies, though ‘normal’ &/or ‘legal’  (within control of management)	Immoral, socially harmful &/or dishonest conduct procedures/ policies, though ‘normal’ &/or ‘legal’  (controlled from political level)	Managerial cover-ups / incompetence / lack of responsiveness in dealing with any of the preceding
No ‘public interest’ disclosure	Individuals breaching laws & regs, substantive maladmin	Organisation breaching laws & regs, substantive maladmin	Substantive maladmin  (Individual)	Official misconduct	Official misconduct	Official misconduct (‘corruption’)	Substantive maladmin  (Organisation)	Substantive maladmin  (Sectoral/govtl)	May also be simply ‘principled organisational dissent’	May also be simply ‘principled organisational dissent’	Anything from maladmin to principled dissent

### Likelihood of personal grievances/conflicts being involved

All personal grievance, no ‘public interest’ component	Almost certainly <u>primarily</u> personal/personnel grievances, but with a public interest component	Probably personal as well as public interest component	Public interest disclosure, <u>often</u> made due to personal conflict, &/or preceded by personal conflict over whether conduct is problematic (& sometimes complicated by past personal complicity)	Public interest disclosure, <u>often</u> preceded by interpersonal conflict & <u>probably</u> preceded by personal conflict over existence or degree of problem	Public interest disclosure, <u>often</u> preceded by interpersonal conflict & <u>almost certainly</u> preceded by personal conflict over existence or degree of problem
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### Typical complaint/investigation mechanisms

Internal grievance procedures	Internal grievance procedures	Internal grievance procedures	Internal performance review, conduct procedures	Internal audit  Internal conduct procedures	Internal audit  Internal conduct procedures	Internal audit  Internal conduct procedures	Internal audit  Internal conduct procedures	?	?	?	?
Public sector mgt agency review	Public sector mgt agency review	Public sector mgt agency review	?	Anti-corruption body	Anti-corruption body	Anti-corruption body	Ombudsman	Ombudsman	Ombudsman?	?	?
	Ombudsman	Ombudsman	Ombudsman?	Police, DPP & criminal courts	Police, DPP & criminal courts	Police, DPP & criminal courts	Auditor-General	Auditor-General	Media	Parliament/ Media	Parliament/ Media