



Whistling while they work

towards best practice whistleblowing programs in public sector organisations

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**Second Report of the Australian Research Council Linkage Project --
*Whistling While They Work: Enhancing the Theory and Practice of Internal
Witness Management in Public Sector Organisations***

Draft Report

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<i>Commonwealth</i>	Commonwealth Ombudsman Australian Public Service Commission
<i>New South Wales</i>	Independent Commission Against Corruption New South Wales Ombudsman
<i>Queensland</i>	Crime & Misconduct Commission Queensland Ombudsman Office of the Public Service Commissioner
<i>Western Australia</i>	Corruption & Crime Commission Ombudsman Western Australia Office of the Public Sector Standards Commissioner
<i>Victoria</i>	Ombudsman Victoria
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Comments on this report

Comments on the contents of this report are invited by **30 September 2009** and should be directed to:

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Summary

This Report

This draft report sets out the results of four years of research into how public sector organisations can help maintain their integrity and value their employees, by developing and implementing new models for better practice in the management of whistleblowing.

It represents the second and final report of the Australian Research Council-funded Linkage Project, *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations* (2005-2009). It follows the first report, *Whistleblowing in the Australian Public Sector*, published by the Australia & New Zealand School of Government and ANU E Press in September 2008 (Brown 2008).

Whistleblowing is the “disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action” (Miceli & Near 1984: 689). In this report, whistleblowing is also taken to mean disclosures by organisation members about matters of “public interest” – that is, practices where the suspected or alleged wrongdoing affects more than the personal or private interests of the person making the disclosure.

This report describes, in practical and qualitative terms, the required elements of new, better practice whistleblowing programs in organisations. The research is based on the experience of the 16 case study agencies to the project, seen in the light of the wider research, including:

- the quantitative analyses undertaken in the first report and further analyses undertaken for the purposes of this report, including extensive comparative analyses;
- qualitative data obtained from the interviews of internal witnesses, managers, investigators and support staff as well as free text responses to the surveys; and
- results of a series of workshops of representatives of case study agencies.

The report provides a new framework of elements and sub-elements, common to the needs of all organisations – large and small – for establishing a successful program for:

- encouraging public officials to report wrongdoing within or by their organisation, to those that can effect action;
- ensuring effective investigation and action in response to those reports; and
- supporting and protecting employees who report.

These recommendations for a new generation of whistleblowing programs are aimed at all organisations who wish to develop or improve their whistleblowing policies and procedures.

Two key messages come out of this research. The first is that organisations can and should adopt a policy of ‘when in doubt report’ to encourage the reporting of wrongdoing. This means that organisations should not set artificial administrative thresholds for receiving reports, but rather encourage staff to bring forward any issue that is concerning them. It is the view of the research team that it is better for organisations to receive too much information about wrongdoing than too little, or too late.

The corollary of this approach is that organisations will be accepting an active obligation to take each report seriously and to take appropriate action. This action may well be to inform the reporter that their suspicions have not been backed up and explaining to them the reasons for that conclusion.

The second key message to come out of this research project is that organisations need to improve their performance in supporting and protecting persons who come forward with reports of wrongdoing. There was ample evidence that this is one area where organisations are currently falling down. This is the area where our research suggests organisations now have much to gain, through a new approach to whistleblowing programs in which public sector agencies can be more confident that they have the tools to ensure both the accountability and integrity of our public institutions, and the health, safety and well-being of officials who fulfil their public duty to report wrongdoing.

The program framework has been developed in conjunction with a Standards Australia working group now reviewing the *Australian Standard on Whistleblower Protection Programs for Entities* (AS 8004-2003), and provides a working basis for the proposed key elements of that revised Standard, for the guidance and assistance of organisations throughout Australia.

Against each of the five fundamental elements of a whistleblowing program, the report provides a checklist of the key items that are required by any organisation wishing to have successful policies, a guide to key complex issues in the management of whistleblowing, and select sample procedures for operationalising the framework:

1. Organisational commitment

It is a major conclusion of the project that legislative provisions and black letter procedures can only go so far in creating an effective whistleblower reporting and protection regime. The research has shown that an essential ingredient in any whistleblowing program is the commitment from each organisation to encourage reporting, act on the reports where they have been verified and to protect reporters from any adverse consequences.

The first required element in a best practice whistleblowing program is a clear statement by senior management of organisations in support of the concept of reporting wrongdoing and the principal of whistleblowing. Senior management also need to commit themselves to undertaking a credible investigation process upon receipt of reports and, where some wrongdoing or failure has been verified, acting upon that. Our research has found that employees who do not believe that their report will be taken seriously are far less likely to report wrongdoing, to the detriment of the organisation involved.

Not only should these commitments be reflected in policies and procedures, they need to be actively pursued on a day-to-day basis. This means that organisational management need to take every opportunity to commit themselves to encouraging reporting and protecting reporters – walking the talk. This needs to be backed up with training and awareness.

The research has shown that in many organisations, even where there is commitment from senior management to the principles of whistleblowing, that line managers can sometimes be skeptical and obstructive. Given that line managers are the front line for the receipt of reports of wrongdoing it is essential that they understand the agencies commitment to whistleblowing, its policies and procedures and possess the management skills to be able to

sympathetically deal with reporters. As well, it will be line managers who are best positioned to prevent any reprisal action being taken against reporters.

The qualitative research undertaken in this project indicated that some line managers have negative and prejudicial views about employees who come forward with reports of wrongdoing. This is a challenge for organisations to directly face up to these attitudinal issues and to address them through real leadership and training.

This report has found that, overall; organisations do not generously resource their whistleblowing functions. One of the key recommendations in this report is that this function be adequately resourced. Following on from that, it is essential that whistleblowing policies and procedures are seamlessly interwoven into every organisation's governance arrangements. Audit committees, or the equivalent, should regularly evaluate and monitor the effectiveness of the whistleblowing policies and procedures, just as they evaluate and monitor all other governance issues.

2. Encouragement of reporting

Encouraging the reporting of wrongdoing is the first major objective of any whistleblowing program. Across the agencies studied, the research confirmed that this objective is well reflected and well-embedded in most whistleblowing programs and procedures.

A very large part of the procedures and policies assessed, and the experience of individuals surveyed and interviewed, concerned staff willingness to report, the ease of reporting, and familiarity with the means of doing so.

Although a considerable of reporting of wrongdoing by public employees occurs, the project also gathered considerable evidence of the reticence of employees to report, or to do so in a timely fashion. Some of the reticence may relate to deficiencies in formal systems, including the complexity and lack of comprehensiveness of formal whistleblowing legislation, providing barriers to the establishment of an 'if in doubt, report' culture within organisations and the general public sector.

More pervasive problems relate to the reporting climate within organisations, where the bulk of evidence of wrongdoing is identified but where employees and organisation members can face natural disincentives to stay silent – ranging from a desire to protect one's career and avoid workplace conflict, to uncertainty over the seriousness of the problem, to fear of reprisal, to unwillingness to 'rock the boat' or challenge friends and colleagues.

The research confirms the importance of a number of key elements if a whistleblowing program is to successfully encourage reporting. Some are basic and practical – clarity as to who is covered, what is covered, and how the organisation should coordinate its handling of different types of reports.

A further key element is the availability of multiple reporting pathways, whereby employees can bring forward reports of wrongdoing either to their line managers – currently the recipients of the vast majority of whistleblowing disclosures – to alternative reporting points within the organisation, or externally to agencies like Ombudsman's Offices and anticorruption bodies. Organisations are encouraged to advise employees that these bodies are an alternative point where reports of wrongdoing can be received. As well, they should maintain close and positive working relations with these organisations.

The research shows that the awareness and accessibility of these alternative pathways may be vital to not only maximizing the chances of employees reporting, but of ensuring that disclosures are properly handled, and the whistleblower effectively supported.

A final key component in encouraging reporting is for the organisation to have credible mechanisms for offering anonymity, backed up by realistic undertakings of confidentiality, for reporters. While this raises the first of many complex issues in the management of disclosures, the research suggests it is a worthy objective that every organisation should aim for. Where employees believe that making a report of wrongdoing will be immediately spread through the informal gossip grapevine within the organisation, it is unlikely that they will come forward with reports of wrongdoing.

3. Assessment and investigation of reports

The second major objective of any whistleblowing program is the effective investigation of whistleblowing reports, followed by effective action. However these responses rely on effective assessment of what the disclosure is about, so that it can be handled in the most appropriate way. These elements are crucial to any program.

Most key elements discussed in this section, arise from the key finding in the first report that the vast bulk – around 97 per cent – of public interest whistleblowing occurs internally in agencies, with the vast bulk of this occurring to supervisors and line managers, rather than to reporting hotlines or internal specialists in the first instance.

The research identified two further key elements that agencies need to build into the assessment stage of disclosures. The first is the lesson that by virtue of their informal receipt, an overwhelming majority of reports of wrongdoing may not end up being handled within the formal reporting processes of the organisation, due to the common ambiguity about when reports should be handled informally by line managers and where they should be made part of the formal reporting processes. It is accepted that many reports of wrongdoing will be dealt with in the day to day process of management. However, it is essential that organisations develop policies that very clearly set out where managers should handle matters themselves, whether and where they should be recorded and where they should be referred to internal or external organisation mechanisms.

The second key lesson is the importance that efforts to support and protect employees who report wrongdoing should commence at the point of disclosure, rather than when problems begin to arise. Even though it was almost unanimously agreed that risk assessment processes should be applied to whistleblowing, in practice, in most case study agencies, this was hardly ever done, with few organisations having a credible risk management processes in place. Risk management is a key component in protecting reporters from reprisals, but it also can be applied to the broader organisational issues that are faced with reports of wrongdoing.

Other components include the need to preserve and manage confidentiality, to begin planning for when confidentiality is not available, and to deal with issues of equity and natural justice that often arise at early stages of investigations. However it is the overarching focus on building risk management into the early stages of the assessment and investigation of disclosures that represents the key finding.

4. Internal witness support and protection

The support and protection of whistleblowers is the third, and arguably most important major objective of any whistleblowing program. However the provision of organisational support to whistleblowers is currently the single weakest area of most agencies' responses.

It is clear that the bulk of agencies, in most jurisdictions, need to give active and urgent consideration to strategies for providing whistleblower support. In particular, agencies need to develop programs, commensurate with their own size and needs, for ensuring that support strategies are directed and where necessary, directly delivered, by persons with an institutional role that conflicts as little as possible with the challenges often implicit in providing that support.

Nevertheless, the results across the case study agencies show that some organisations are considerably more successful than others in tackling this challenge.

All agencies confront the dilemma of the appropriate scale, resourcing and organisational model of internal witness support. Whichever options are chosen, evidence from across the case study agencies points to common elements, *all of which* must be present in any organisation's approach *in some form* if the program is to have some prospect of success.

Beyond simply the question of compliance with legislative compliance, lies the reality that while positive or successful whistleblowing experiences often go unnoticed by the bulk of other employees in an organisation, negative outcomes can often become well-known, costly and debilitating to organisational moral and performance.

An even more pervasive reason for providing support, was confirmed to be the importance of disclosure experiences for defining whether the agency was able to deliver on commitments to provide its employees with a safe, healthy and productive workplace.

A particular breakthrough from the research, was the lesson for some agencies that internal support for whistleblowers was not necessarily a totally new or different strategy to other programs for maintaining or restoring healthy relationships within the workplace – even if more complex than most other workplace health and safety issues.

No internal witness support strategy can hope to eliminate every case in which a whistleblower feels aggrieved – whether because in some cases, employee expectations are simply unable to be met; or because the degree of conflict between the employee and management becomes too great or unresolvable; or because despite best efforts, damage to a whistleblower's wellbeing or career is not able to be prevented. However the experience in case study agencies confirmed that most agencies have both an opportunity – and a responsibility – to significantly reduce the number of employees falling into these categories, thereby fulfilling their obligations to their employees, lessening the costs of disclosure-related conflicts, and earning greater public confidence in their own integrity.

5. An integrated organisational approach

As outlined through the previous sections, the three major objectives of a whistleblowing program are to encourage employee reporting of wrongdoing; ensure effective assessment, investigation and action; and support and protect whistle blowers. While this must be underpinned by organisational commitment to the program, the research has also confirmed that clear and sometimes hard decisions are needed to operationalise an effective approach.

Organisational commitment to the program must move beyond procedures setting out the responsibilities and obligations to be fulfilled by staff, to an approach which also emphasises the responsibilities of the organisation as a whole, including the most senior management.

The research into the case study agencies confirmed the value, on the whole, of more organised and proactive programs, in terms of measurable results. The following elements are intended to help ensure that the many complex issues involved in embedding a whistleblowing program in the organisation are addressed in a holistic fashion.

The Checklist: Required elements for a whistleblowing program

1. Organisational commitment

1.1. Management commitment

- Clear statements by senior management of the organisation's support for the reporting of wrongdoing through appropriate channels ('if in doubt, report')
- Senior management commitment that a credible investigation will follow the receipt of a whistleblowing report, that any confirmed wrongdoing will be remedied, and that whistleblowers will be supported
- Commitment to the principle of whistleblowing among first- and second-level managers
- Understanding of the benefits and importance of having whistleblowing mechanisms among first- and second-level managers
- Knowledge and confidence in policies among first- and second-level managers.

1.2. Whistleblowing policy

- Easy to comprehend whistleblowing policy, including guidance on procedures, relation to other procedures, and legal obligations
- Broad staff awareness of the whistleblowing program
- Broad staff confidence in management responsiveness to whistleblowing
- Broad staff awareness and acceptance of responsibility to report

1.3. Resources

- Staffing and financial resources dedicated to implementation and maintenance of the program, commensurate with organisational size and needs
- Specialised training for key personnel, and inclusion of whistleblowing management issues in general induction and management training

1.4. Evaluation and engagement

- Regular evaluation and continual improvement in the program
 - Positive engagement on whistleblowing issues with external integrity agencies, staff associations and client groups
-

2. Encouragement of reporting

2.1. Comprehensive coverage

- Clear identification of all key categories of organisation members (employees, contractors, employees of contractors, volunteers, at-risk clients) needing inclusion in the whistleblowing mechanism

2.2. Defining reportable wrongdoing

- Clear advice on types of wrongdoing that should be reported
- Clear advice on appropriate reporting points for all different types of wrongdoing (including grievances as opposed to public interest disclosures)
- Clear advice on level of information required/desired
- Clear advice that staff are not protected from the consequences of their own wrongdoing by using the whistleblowing mechanism, nor for false or deliberately misleading information
- Clear advice that staff can nevertheless seek and be granted immunity from consequences from their own less serious wrongdoing, when reporting more serious wrongdoing by others or by the organisation

2.3. Multiple reporting pathways

- Clear *internal* reporting paths and advice on *to whom* and *how* whistleblowing reports should be made, including alternatives to 'up the line' reporting
- Clear *external* reporting paths, including external (contracted) hotlines and advise about relevant regulatory or integrity agencies
- Clear guidance on when reporters should consider reporting outside the normal management chain, or outside the organisation
- Clear advice regarding contact with the media

2.4. Anonymity

- Clear advice that anonymous reports will be acted upon wherever possible, and as to how anonymous reports/approaches can be made
- Commitment to the confidentiality of whistleblowing reports to the maximum extent possible, with clear advice about possible limits of confidentiality.

3. Assessment and investigation of reports

3.1. Identification and tracking of reports

- A coordinated system for tracking all significant reports of wrongdoing (including grievances) at all levels of the organisation
 - Advice to supervisors on when, how and whom to notify about staff complaints and possible whistleblowing reports
-

- Organisational procedure for early notification of external regulatory or integrity agencies about significant or higher-risk reports

3.2. Assessment procedures

- Skills and procedures for differentiating, as appropriate, between different types of wrongdoing (including grievances), and initiating appropriate investigations
- Flexibility in the type, level and formality of investigation to be conducted, including clear criteria for when no further investigation is required
- Early and continuing assessment of the risks of reprisal, workplace conflict or other adverse outcomes involving whistleblowers or other witnesses

3.3. Confidentiality

- Procedures for maintaining the confidentiality of whistleblowers and other witnesses to the maximum extent possible
- Procedures for consulting and, where possible, gaining consent of whistleblowers prior to action that could identify them, including to external agencies
- Strategies for supporting employees and managing the workplace when confidentiality is not possible or cannot be maintained

3.4. Equity and natural justice

- Clear procedures for the protection of the rights of persons against whom allegations have been made
- Appropriate sanctions against false or vexatious allegations
- Clear advice to supervisors about to whom, when and by whom information about allegations need be given, for reasons such as natural justice

4. Internal witness support and protection

4.1. Whistleblower / internal witness support

- One or more designated officers with responsibility for establishing and coordinating a support strategy appropriate to each whistleblowing case
 - Proactive (as well as reactive) operation of the support strategy, i.e. management-initiated rather than simply complaint/concern-driven
 - Support arrangements tailored to identified risks of reprisal, workplace conflict or other adverse outcomes
 - Involvement of whistleblower in risk assessment and support decisions
 - Involvement of identified support person(s) ('confidant', 'mentor', 'interview friend' or similar) and negotiation of their role
-

4.2. Information and advice

- Provision of information, advice and feedback to internal witnesses on actions being taken in response to disclosure
- Provision of information about how to manage their role in the investigation process, including whom and when to approach regarding issues or concerns
- Access to appropriate professional support services (stress management, counseling, legal, independent career counseling)
- Information and advice regarding external regulatory or integrity agencies that can be accessed for support

4.3. Preventing and remedying detrimental action

- Clear commitment that the organisation will not undertake disciplinary or adverse actions, or tolerate reprisals including by managers, as a result of disclosures
- Mechanisms for monitoring the welfare of organisation members who report wrongdoing, from the point of first report
- Positive workplace decisions regarding prevention or containment of the risks of conflict and reprisal
- Direct engagement of supervisors or alternative managers in support strategy and related workplace decisions, to maximum extent possible
- Clear authority for support personnel to involve higher authorities (CEO, audit committee and external agencies) in whistleblower management decisions
- Specialist expertise (internal or external) for investigating alleged detrimental actions or failures in support, with automatic notification to external agencies
- Flexible mechanisms for compensation or restitution where there is failure to provide adequate support, or prevent or contain adverse outcomes

4.4. Exit and follow-up strategy

- Exit strategies for concluding organised support to whistleblowers
- Follow-up monitoring of whistleblower welfare, as part of regular evaluation of program and to identify ongoing, unreported support needs

5. An integrated organisational approach

5.1. Clear choice of organisational model for support

- 'Standing', 'devolved', 'case-by-case' support strategies
 - Clear understanding of whistleblowing-related roles and responsibilities of key players, internal and external to the organisation
-

5.2. Separation of investigation and support functions

- Operational separation of functions
- Clear and direct lines of reporting from support personnel to audit/integrity committee and/or CEO, and external agencies

5.3. Shared responsibility for whistleblower support

- Clear lines of communication to ensure manager(s) retain responsibility for their workplace and workers to maximum extent possible
- Clear lines of communication with external agencies re: incidence, nature and status of active cases

5.4. Embedded policies and procedures

- Integrated & coordinated procedures (not 'layered' or 'alternative')
 - Integrated complaint/incident recording and management systems
 - Whistleblower support integrated into human resources, career development, workplace health & safety (WH&S) policies.
-

Part 1.

Introduction

1. This report

Organisations are the building blocks of modern society, providing the institutional framework within which economic life, public policy and services, and the livelihoods, careers and social well-being of citizens play out on a daily basis.

Public sector organisations are especially important to the social fabric, as the custodians of shared values and goals, and the vehicles by which millions of Australian federal, state and local public officials serve the interests of the community.

This draft report sets out the results of four years of research into how public sector organisations can help maintain their integrity and value their employees, by developing and implementing new models for better practice in the management of whistleblowing.

It represents the second and final report of the Australian Research Council-funded Linkage Project, *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations* (2005-2009). It follows the first report, *Whistleblowing in the Australian Public Sector*, published by the Australia & New Zealand School of Government and ANU E Press in September 2008 (Brown 2008).

Whistleblowing is the “disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action” (Miceli & Near 1984: 689). In this report, whistleblowing is also taken to mean disclosures by organisation members about matters of “public interest” – that is, practices where the suspected or alleged wrongdoing affects more than the personal or private interests of the person making the disclosure.

The first report set out a new picture of the incidence, significance and management of whistleblowing in government agencies across Australia, from the Commonwealth, NSW, Queensland and Western Australian governments. It drew on information drawn from approximately 300 agencies who provided information about their whistleblowing systems and procedures, 118 agencies whose staff participated in a major randomised survey of public employees, and 16 of those organisations who participated as case study agencies in more in-depth research including further surveys, interviews and workshops.

While the first report provided a comprehensive analysis of the quantitative data that describes whistleblowing in the Australian public sector as a whole, this report fulfils the project objectives of describing, in more practical and qualitative terms, the required elements of new, better practice whistleblowing programs in organisations. The research is based more closely on the experience of the 16 case study agencies to the project, seen in the light of the wider research.

The report provides a new framework of elements and sub-elements, common to the needs of all organisations – large and small – for establishing a successful program for:

- encouraging public officials to report wrongdoing within or by their organisation, to those that can effect action;
-

- ensuring effective investigation and action in response to those reports; and
- supporting and protecting employees who report.

The recommendations for a new generation of whistleblowing programs contained here, are aimed at all organisations who wish to develop or improve their whistleblowing policies and procedures.

Against each of the five fundamental elements of a whistleblowing program, the report provides a checklist of the key items that are required by any organisation wishing to have successful policies, a guide to key complex issues in the management of whistleblowing, and select sample procedures for operationalising the framework.

The sample procedures are not intended to be adopted word for word by organisations, but taken as a starting point for comparison with existing procedures and updating of policies in line with varying legislative requirements in each jurisdiction and the needs of differing organisational contexts.

The program framework has been developed in conjunction with a Standards Australia working group now reviewing the *Australian Standard on Whistleblower Protection Programs for Entities* (AS 8004-2003), and provides a working basis for the proposed key elements of that revised Standard, for the guidance and assistance of organisations through Australia.

Two key messages come out of this research. The first is that organisations can and should adopt a policy of ‘when in doubt report’ to encourage the reporting of wrongdoing. This means that organisations should not set artificial administrative thresholds for receiving reports, but rather encourage staff to bring forward any issue that is concerning them. It is the view of the research team that it is better for organisations to receive too much information about wrongdoing than too little, or too late.

The corollary of this approach is that organisations will be accepting an active obligation to take each report seriously and to take appropriate action. This action may well be to inform the reporter that their suspicions have not been backed up and explaining to them the reasons for that conclusion.

The second key message to come out of this research project is that organisations need to improve their performance in supporting and protecting persons who come forward with reports of wrongdoing. There was ample evidence that this is one area where organisations are currently falling down. This is the area where our research suggests organisations now have much to gain, through a new approach to whistleblowing programs in which public sector agencies can be more confident that they have the tools to ensure both the accountability and integrity of our public institutions, and the health, safety and well-being of officials who fulfil their public duty to report wrongdoing.

2. The *Whistling While They Work* project

The Australian Research Council-funded Linkage Project, *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, led by Griffith University (2005-2009), has examined public officers' experience of and attitudes towards whistleblowing across a wide cross-section of public agencies from the Commonwealth, New South Wales (NSW), Queensland and Western Australian Governments.

The project involved four other Australian universities and 14 partner organisations, including the public integrity and management agencies listed in the Acknowledgements and on the project website, <http://www.griffith.edu.au/whistleblowing>. A steering committee representing the partner organisations oversaw the project, while the project team consisted of the lead researchers from each participating university plus three partner investigators, from the NSW, Queensland and Western Australian governments.

The research aim was to identify and expand 'current best practice' systems for the management of public interest disclosures in the Australian public sector, including more effective whistleblower protection. By undertaking empirical research into the performance and potential of existing internal witness management approaches, the project sought to develop new standards for internal disclosure procedures (IDPs) in public sector integrity systems, foster improved coordination between integrity bodies in the handling and oversight of disclosures, and support implementation of improved internal witness management strategies in a range of organisational settings.

The four main objectives of the research have been:

- To describe and assess the effects of whistleblower legislative reforms on the Australian public sector over the past decade, including effects on workplace education, willingness to report and reprisal deterrence;
- To study comparatively what is working well and what is not in public sector internal witness management, to inform best practice models for the development of formal internal disclosure procedures (IDPs) and workplace-based strategies for whistleblower management;
- To identify opportunities for better integration of internal witness responsibilities into values-based governance at organisational levels, including improved coordination between the roles of internal and external agencies, and strategies for embedding internal witness responsibilities in good management; and
- To inform implementation strategies for best practice procedures in case study agencies, including cost-efficient options for institutionalising and servicing such procedures in a range of organisational, cultural and geographic settings, as well as legislative and regulatory reform where needed.

The project is believed to be the largest research project into whistleblowing on a per capita basis conducted anywhere in the world.

The surveys and interviews

As set out in the first report (Brown 2008, pp.15-21), eight surveys were used in the project to collect data on individual experiences and institutional practices.

First, the ***Agency Survey*** sought data on the extent, content and operation of whistleblowing procedures in agencies, as well as participation in further stages of the research. With the support of the partner organisations, this survey was distributed to almost all agencies of the four participating governments (793 agencies in total), resulting in 304 returns. The participating agencies were a wide cross-section of government organisations in each jurisdiction, from small to large, covering a wide range of functions and portfolios. They include many of the most major departments and statutory authorities in each jurisdiction, government owned corporations, the military, and local governments of varying sizes.

Similar data on practices and procedures were sought from specialist integrity agencies in the jurisdiction – including partner organisations to the project – through a corresponding ***Integrity Agency Survey***.

Of the 304 agencies who answered the Agency Survey, 175 also supplied their written whistleblowing-related procedures, which were analysed in a separate ***Procedures Assessment***, comparing their comprehensiveness and completeness using a 24-item rating scale. This scale was developed by the research team on the basis of existing literature and the Australian Standard, as discussed in chapter 10 of the first report (Roberts 2008).

The largest single research activity was the ***Employee Survey***, in which 118 agencies participated. This was a confidential, anonymous survey of a random sample of staff from each agency. From July to October 2006, printed surveys were distributed by agencies to a total of approximately 23,000 public employees, resulting in a total of 7,663 responses. At times these data are analysed in conjunction with the results of the Agency Survey (all 118 Employee Survey agencies had also completed this), as well as the results of the Procedures Assessment (in which 102 of the Employee Survey agencies also participated).

A total of 87 of the agencies volunteered to participate in further research as ***case study agencies***, with 15 agencies being selected by the research team for this role in May 2006. Since then, an additional agency has also participated in most of the case study analyses, with results varying slightly depending on whether drawn from the group of 15 or 16.

In the case study agencies, three more surveys were administered to collect more in-depth information about the whistleblowing arrangements and management practices of these agencies, and the experience of particular target groups of staff. In each case, respondents were also invited to volunteer for a confidential interview.

The ***Internal Witness Survey*** elicited more extensive information from 242 whistleblowers across the case study agencies. The internal witnesses were selected using targeted mechanisms: agencies advertised internally requesting volunteers who had reported wrongdoing, supplemented by approaches to employees known to have reported.

The ***Casehandler*** and ***Manager Survey*** (titled 'Managing the Internal Reporting of Wrongdoing') elicited more extensive, comparable information from these two groups within the case study agencies. Casehandlers were defined as including: internal investigation, audit and ethics staff; human resource management staff; internal and external (e.g. contracted) employee welfare and assistance staff; and union staff. Surveys were typically distributed to all, or a large proportion of, the identifiable casehandlers in each case study

agency; and to a random selection of managers (typically 5 percent of the total population of managers or 150 individuals, whichever provided the larger figure). Data collection occurred from April to December 2007. This report includes analysis of the 828 responses received from both groups, being 315 casehandlers (many of whom also identified as managers) and 513 managers (who did not necessarily also identify as casehandlers), again spread across the case study agencies.

In addition, a corresponding *Integrity Casehandler Survey* was distributed to relevant casehandling staff from specialist integrity agencies in each jurisdiction (including partner organisations).

From among these survey respondents, 82 individuals were successfully contacted for a further semi-structured **interview** on their experiences in relation to whistleblowing:

	Cth	NSW	Qld	WA	Total
Internal witnesses	16	21	3	10	50
Casehandlers	1	4	2	4	11
Managers	1	6	9	5	21
Total	18	31	14	19	82

Major findings from the first report

The first report of the Whistling While They Work project was published by ANU E-Press and launched by Senator John Faulkner, Commonwealth Special Minister of State in September 2008 (Brown 2008; http://epress.anu.edu.au/whistleblowing_citation.html).

The key findings (pp.289-312) also pointed to several areas of improvement needed at the level of organisational whistleblowing programs, now picked up in this report. In summary, the first phases of the research showed particular need for:

1. More comprehensive agency systems for recording and tracking employee reports of wrongdoing;
2. Agency procedures for assessing and monitoring the risk of reprisals or other conflict for those who report;
3. Clearer and better advice for employees on the range of avenues available for reporting wrongdoing;
4. Basic training for public sector managers in how to recognise and respond to possible public interest disclosures;
5. A program of training for internal investigators in basic techniques, with special attention to issues of internal witness management;
6. Adoption and expansion of structured support programs for employees who report wrongdoing;
7. Improved mechanisms for monitoring the welfare of employees who report wrongdoing, from the point of first report;

8. More detailed and flexible agency procedures for the investigation and remediation of reprisals and breaches of duty of care;
9. A dedicated oversight agency or unit for the coordination of responses to employee-reported wrongdoing; and
10. Legislative action to provide more effective organisational systems, realistic compensation mechanisms, and recognise public whistleblowing.

This report provides more detailed guidance on how organisations can address these priority areas (especially findings 1-8), in the context of their overall whistleblowing program. Key lessons from the first phases of the research are also repeated or extended, where useful, throughout this report.

3. The case study agencies

Features of the case study agencies

The purpose of inviting agencies to participate as ‘case study agencies’ was to examine a number of agencies’ internal witness management systems in greater detail, and engage those agencies in the development of new benchmarks for best practice, both for their own use and for the benefit of agencies more generally.

A total of 87 of the agencies volunteered to participate in further research as case study agencies, with 16 agencies being selected by the research team for this role in May 2006. Four agencies were chosen from the Commonwealth and Queensland Governments, five agencies from NSW, and three from Western Australia.

The selection was based on criteria including:

- size;
- type/portfolio area;
- approximate level of integrity risks;
- presence or non-presence of relevant procedures, training & resources;
- internal investigation activity & witness case-load; and
- known or suspected good/bad practice in internal witness management.

There is considerable diversity among agencies, and even within particular types of organisations, in terms of their nature, size, and perceived risk of wrongdoing.

The majority of the case study agencies are departments of state (n=9), however there are also three local governments, as well as two statutory bodies, a tertiary education body, and a government-owned corporation. The departments spanned a wide range of portfolio areas, including health (n=3), education (n=3), law enforcement (n=3), and transport (n=1).

There is also great variation between in terms of size, with the number of full-time equivalent employees for each agency ranging from 174 employees in the smallest agency to 110,000 employees in the largest. The most common organisational size for case study agencies was between 1,000 and 5,000 employees, with seven agencies of this size.

The 16 case study agencies were thus a substantial snapshot of the larger group of 118 agencies from which the Employee Survey dataset is drawn. In all, 2,116 responses to the Employee Survey were received from the case study agencies, meaning that while these agencies represent only 13 per cent of the larger group, their respondents account for 28 per cent of the total Employee Survey dataset. Accordingly, the further data collected from the case study agencies – via survey and interview – is likely to be typical of organisational experience more generally.

Comparative analysis

As part of the research, results from the surveys were compared between the case study agencies on a range of measures. One was the comprehensiveness of their written procedures, as part of the analysis described in Roberts (2008). The agencies were then compared on eight key indicators relevant to whistleblowing. The indicators used were:

1. (Positive) employee attitudes to reporting
2. Level of employee awareness of reporting-related legislation
3. Level of employee awareness of relevant policies
4. Whistleblowing propensity of employees
5. Trust in organisational response to whistleblowing
6. (Low) inaction rate in response to perceived serious wrongdoing
7. Reporters' knowledge of whether investigation has occurred
8. (Positive) treatment of reporters by management following report.

These indicators were selected as a result of the analysis in the first WWTW report, from which they emerged as key, relatively objective measures of success in relation to the management of whistleblowing.

There were significant variations between agencies on many of these measures, just as the first report recorded major variations in results between agencies across the board. Comparisons of the agencies on some of these indicators are shown as column graphs at various places throughout this report.

The agencies were ranked according to their overall level of success against these indicators. The results were shared between representatives of the agencies in a project workshop, for the purposes of provoking discussion about what they each did to encourage reporting, and support whistleblowers. The results of this discussion, along with the quantitative data and results from interviews, was used to inform the content of this report.

Does type of agency make any difference?

The project commenced at a time when a number of Australian police services had established highly organised whistleblower or 'internal witness support' programs, but it was widely argued that these programs were not necessarily relevant to other public organisations – being different in nature and integrity risks to police services.

To help identify the transferability of lessons between types of agencies, a number of analyses were conducted.

As noted above, one of the criteria for selecting agencies was their approximate level of integrity risk. The Casehandler and Manager Survey (Q12) asked respondents to rate the risk factors for wrongdoing in their organisation (1=very low to 5=very high). While there was variation among individual case study agencies, the generalised view of casehandlers and managers from all agencies were that their risk factors were moderate.

For a more comprehensive comparison, all 118 agencies who participated in the employee survey were also compared by type (Departments of State; Statutory Authorities; Police services; Courts and Tribunals; Local Government Agencies; Educational Institutions; Government owned corporations; and Regulatory bodies, monitoring agencies, enforcement agencies). A one-way between groups multivariate analysis of variance was performed to investigate agency type differences on the six variables relevant to the organisational commitment of employees: trust in management, job satisfaction, organisational citizenship behavior, whistleblowing propensity, confidence in legislation, and commitment to whistleblowing.

As shown in the table below, the analysis indicated that on these variables, relevant to the salience of whistleblowing and levels of organisational commitment to whistleblowing, there was no significant variation by type of agency. This tends to confirm the indications in the first report that while organisational cultures and levels of commitment do vary significantly between agencies, that these variations are determined principally by the nature of management in each individual agency rather than by organisation type, purpose, or jurisdiction.

Means of organisational culture variables across types of agencies:

Agency Type	N	Trust in mgt	Job Satis'n	OCB	WB Prop'y	Conf in leg'n	Com't to WB
Departments	2751	3.45	3.50	3.79	3.74	3.13	3.30
Statutory Authorities	2161	3.37	3.46	3.75	3.73	3.17	3.27
Police Services	543	3.27	3.49	3.76	4.03	3.31	3.38
Courts/Tribunals	143	3.27	3.39	3.75	3.80	3.16	3.33
Local Government	878	3.39	3.51	3.79	3.75	3.14	3.27
Educational Institutions	150	3.50	3.54	3.72	3.52	2.97	3.20
Government Owned Corporations	498	3.40	3.61	3.84	3.69	3.01	3.33
Regulators/Monitoring agencies	251	3.47	3.44	3.66	3.78	3.21	3.40
Overall	7375	3.40	3.48	3.78	3.65	3.16	3.29

Preliminary assumption testing was conducted to check for normality, linearity, univariate and multivariate outliers, homogeneity of variance-covariance matrices and multicollinearity, with no serious violations noted. There was a statistically significant difference between agency types on the combined dependent variables: $F(48, 18741) = 6.56, p=000$; Wilk's lambda = .092; partial eta squared = .014. When the results for the dependent variables were considered separately, four of the six reached significance, using a Bonferroni adjusted alpha of .006.

***F* values of dependant variables from one-way between groups multivariate analysis of variance**

Dependent variables	F (8, 3183)	p	Partial eta squared
Trust in management	5.97	.000	.012
Whistleblowing propensity.	8.27	.000	.017
Confidence in legislation	4.94	.000	.010
Organisational citizenship behavior	5.21	.000	.011

Independent variables were the categories of agency type. The means on each of these variables are set out in the first table above and the *F* values of dependant variables from one-way between groups multivariate analysis of variance are in the second table.

Program framework

Early in the project, the research team began the task of assembling a working framework by which to describe and compare the fundamental institutional elements and strategies that made up organisations' different approaches to the management of whistleblowing.

As well as being informed by background literature and the experience of members of the research team, the development of this framework commenced at a July 2005 Symposium held by the project and the Australia & New Zealand School of Government in Canberra, at which a number of organisations spoke about their whistleblowing programs.

A first draft framework was then developed based on the 24 items used in the assessment of the comprehensiveness of written agency procedures (Roberts 2008), including the 14 items suggested by the checklist provided in the *Australian Standard on Whistleblower Protection Programs for Entities* (AS 8004-2003).

The framework was then developed through its use as a basis for discussion among case study agency representatives at three case study workshops, held in July 2007, July 2008, and September 2008. The agency representatives were all responsible for the management of whistleblower issues in their respective organisations. The workshops dealt systematically with a series of issues raised by the research team. These workshops were recorded, providing a considerable amount of data on the agencies' practices.

The emerging framework was published as an Appendix to the first report.

This framework was then revised in light of further research team discussions and the final case study data, to produce the simplified framework that forms the structure for the body of this report. While it began as a tool for comparative analysis, the framework now provides a comprehensive blueprint of the elements, sub-elements and checklist items validated by the research as needed for an effective whistleblowing program in any organisation.

4. Implementation

Reform of legislative requirements

In line with the original project objectives, this report is intended to constitute a guide to the required and desired features of the whistleblowing programs of Australian public sector organisations.

This objective was set against a background of uncertainty regarding the adequacy of Australian public sector whistleblowing legislation, and in particular, the take-up of whistleblowing policies at operational levels by agencies. The first report provided considerable evidence confirming widespread failure in that take-up, some of which is repeated or extended in this report.

Since commencement of the project many Australian governments have commenced reviews of their whistleblowing legislation, in part to take advantage of the lessons emerging from this research. As argued in the first report (pp.267-9), legislative action is required to put in place clearer, more comprehensive minimum standards for the obligations and procedures of individual agencies.

The most important review has been undertaken by the Commonwealth Government and Parliament, through the House of Representatives Standing Committee on Legal and Constitutional Affairs (2009). Drawing on the *Whistling While They Work* research, the Committee recommended the inclusion in proposed Commonwealth legislation of detailed requirements for agency procedures consistent with the program framework recommended by this report.

The project team encourages other governments to continue with the revision of public interest disclosure legislation in a manner that increases the obligations and capacities of agencies to develop procedures on the model now provided from this research.

Revising the Australian Standard

The *Australian Standard on Whistleblower Protection Programs for Entities* (AS 8004-2003) was used extensively in this research as a benchmark for assessing the content and quality of organisations' approaches to whistleblowing.

The Australian Standard is now under revision, through a Standards Australia working group chaired by Dean Newlan <dnewlan@mcgrathnicol.com>. Several members of the research team, partner organisations and case study agencies are represented on the working group.

In making comments on this report, interest persons are specifically invited to comment on the suitability of the program framework recommended here as a basis for the content of the revised Australian Standard.

Part 2.

Towards Best Practice Whistleblowing Programs

1. Organisational Commitment

What is meant by organisational commitment?

Organisational commitment refers to the commitment that an organisation has to promoting the reporting of wrong doing and the protection of employees who come forward with reports.

It is a major conclusion of the project that legislative provisions and black letter procedures can only go so far in creating an effective whistleblower reporting and protection regime. The research has shown that an essential ingredient in any whistleblowing program is the commitment from each organisation to encourage reporting, act on the reports where they have been verified and to protect reporters from any adverse consequences.

Organisational commitment also has a specific meaning in organisational psychology. In the range of attitudes studied in organisational behaviour, organisational commitment sits beside job satisfaction and job involvement, as ‘a state in which an employee identifies with a particular organisation and its goals, and wishes to maintain membership in the organisation’ (Robbins, Millett, & Waters-Marsh, 2004).

This broader definition is of relevance to this study. As discussed in Chapter 3 of the first report (Wortley, Cassematis, & Donkin, 2008), employees were surveyed on a variety of attitudinal measures. The items included in the Employee Survey were:

- organisational citizenship behavior;
- whistleblowing propensity (both individual and organisational);
- trust in management;
- job satisfaction;
- confidence in whistleblowing legislation; and
- management response to whistleblowing (perceived level of openness to employee reports on the part of management).

The measures described above comprehend the very practical definition used in this study, management response, as well as exploring employees’ attitudes to the organisation as a whole. It is reasonable to describe these two perspectives as being ‘top down’ (management commitment) and ‘bottom up’ (staff identification). Clearly, both perspectives are relevant. This section addresses both parts of the issue: the importance of what employees think about the organisational response to whistleblowing, and the importance of how managers perceive the issue of effective whistleblowing, for an effective whistleblowing program.

Throughout the research, there was a strong link between the issue of the ethical climate of the organisation (organisational culture) and effective whistleblowing policies and procedures. Many respondents and interviewees noted this connection both in a positive and a negative light.

Where there was a good ethical climate and leadership support for whistleblowing, managers were all of the view that a good result would follow. In particular, underpinning the specific elements below, strong organisational commitment was indicated by:

- A culture of integrity in the organisation, and commitment to whistleblowing and the protection of reporters as a key component of that culture, manifested in a code of conduct; and
- Involvement in the whistleblowing procedures at all levels of management, since line managers are the most likely recipients of staff concerns, and need to fully understand the organisations attitudes, policies and procedures in relationship to whistleblowing.

Participants in one case study workshop also noted that the senior executives of organisations were amenable to arguments in support of whistleblowing that:

- stressed the value of compliance with government policies, as set down in the relevant legislation; and
- fulfilled arguments for efficiency, including the benefits to the organisation of fraud or defective practices being identified, and the benefits of resources put into awareness raising and training, for reducing the number of whistleblowing cases that became difficult, complex, time-consuming and costly to resolve.

However, a number of respondents noted that where senior managers in an organisation did not act ethically themselves, the effort being put into whistleblowing policies and procedures was largely wasted. The phrase ‘walk-the-walk’ was used frequently in interviews and workshops. One of the most disturbing criticisms that was made about leadership in the area of whistleblowing, was that there are many managers who will publicly support the process but privately act against it. Put another way, the words and actions do not reconcile.

Following on from the above, a number of factors can indicate the absence of an organisational commitment to whistleblowing:

- A culture of secretiveness and cover-ups (‘butt covering’) and when staff make disclosures;
- A ‘shoot the messenger’ culture when unpleasant issues are raised;
- Disregarding a staff member’s report as merely being that person’s personal perception
- Gossip as the major channel of communication about wrongdoing;
- Use of derogatory language (even privately) in referring to staff members who make disclosures; and
- Damaging the careers of staff members who make disclosures.

The following elements were shown by the research to be critical in achieving the type of organisational commitment necessary for an effective program.

1.1. Management commitment

Checklist items:

- Clear statements by senior management of the organisation's support for the reporting of wrongdoing through appropriate channels ('if in doubt, report')
- Senior management commitment that a credible investigation will follow the receipt of a whistleblowing report, that any confirmed wrongdoing will be remedied, and that whistleblowers will be supported
- Commitment to the principle of whistleblowing among first- and second-level managers
- Understanding of the benefits and importance of having whistleblowing mechanisms among first- and second-level managers
- Knowledge and confidence in policies among first- and second-level managers.

Leadership... in principle

There was almost unanimity among the interviewees and the participants in the workshops that leadership or 'tone at the top' were crucial components of an effective reporter system. Many participants nominated leadership as being the most important factor in a successful whistleblowing system.

One way of looking at the manifestation of leadership on this issue is the inclusion of a statement of commitment in the agency procedures. As described in the first report (Roberts, 2008), one criterion in the assessment of procedures was the commitment to the principle of whistleblowing. Out of the 24 items, that item was ranked 11th in terms of the evaluation of how it was dealt with in the 175 sets of procedures.

The issue of leading by example was mentioned frequently. Many managers made the connection between acting promptly and properly with disclosures and the encouragement to employees in making disclosures.

Many of the interviewees made the linkage between the culture of the organisation and its leadership. Some were extremely positive about the commitment of the executives, others were not so positive. On balance, more respondents were positive about the leadership commitment than negative. Also, the overwhelming majority indicated that they considered that leadership commitment to the principles of whistleblowing was a key component of an effective whistleblowing system. Many noted that leadership on an issue like encouraging reporting and protecting reporters comes from all levels of management and raised the issue of the importance of awareness raising and training. The connection was often made between whistleblowing and the issue of integrity and professionalism. It was noted that a good organisation respects its staff and treats them professionally.

One issue that managers have to take into account is that not only does management provide a leadership role with regard to whistleblowing, but that individual managers themselves, could be the subject of investigations. That places quite a burden upon managers and those in the organisation who undertook the investigations.

Clear statements by senior management of the organisation's support for the principles and processes of reporting wrongdoing, are vital to demonstrating organisational commitment. Some suggested statements are included in the sample procedures. However, the leadership

of the organisation also needs to make it clear on a continuing basis, that disclosures made by staff are valued and that the organisation is taking all disclosures seriously and, if there is found to be validity in the allegations, to act upon those allegations.

Backing up the commitment... with objectives

In the analysis of whistleblowing procedures, agencies were assessed on the comprehensiveness of the procedures for the investigation of reports of wrongdoing (Roberts, 2008). This item was rated sixth out of 24, indicating that organisations, by and large, had reasonable procedures for investigating reports. In many cases, the agencies studied used a generic set of investigation procedures which were applied to a range of matters that the agency conceded need investigating.

Of course, having mechanisms in place for the investigation of wrongdoing does not automatically mean that an organisation is committed to a credible investigation process. As will be discussed in section 3, there is considerable ambiguity about the delineation between handling whistleblower reports formally or informally. In many circumstances a decision to handle a matter informally will mean that no credible investigation process occurs.

Turning to the issue of remedying the wrongdoing, the first report in Chapter 5 noted the importance of an effective investigation process to the reporters (Smith & Brown, 2008). The authors observed that, on the analysis of data from the employee survey, 56 per cent of public-interest reporters (N=913) whose issue were investigated indicated that things became better as a result of investigation of their reports. 31 per cent of public-interest reporters responded that there was no change, while 10 per cent said that things became worse.

The internal witness survey, presented a less optimistic picture. As reported on page 78 of the first report:

In over three-quarters of the cases where whistleblowers were aware of an outcome, their belief that wrongdoing had occurred was vindicated by the investigation. In most cases that vindication was not matched by effective action. Given that most initial investigations are internal, these figures indicate that in the opinion of whistleblowers, public sector organisations are much better at finding wrongdoing in their ranks than they are at effectively dealing with it.

An even more telling indication of the importance of a credible approach to dealing with wrongdoing, is found in the reason why employees who have observed wrongdoing do not report it. In Chapter 3 of the first report (Wortley et al., 2008), it is reported that 38.1 per cent of the 3125 employees who witnessed wrongdoing nominated their reason; 'I didn't think anything would be done about it'. Clearly, that is not a vote of confidence in their respective organisations that they believe that the organisation would take their reporting seriously.

Managers and case handlers were asked comment upon reasons as to why they thought employees chose to report wrongdoing rather than to stay silent. 37.4 per cent said that a belief that their report will help correct the problem was extremely important to reporters, 47.1 per cent said it was very important, 14.5 per cent somewhat important and 1 per cent said it was not all-important (N=869).

The workshops noted that, getting an organisation to take action following an investigation, often needs active steps to raise the issue of remedies with the organisation's executive. This

was described as 'knocking heads together or 'reading the riot act'. However, pushing action up to senior management often involves identifying the complainant. These administrators of whistleblowing units agreed that it would be better if the entire organisation was involved in dealing with remedying the wrongdoing, rather than targeting specific areas.

From the manager interviews, a note of reality:

Interviewer: When reports of wrongdoing have been investigated, do you think the organisational response to the issue raised is usually adequate?

Manager: In some regards yes..... you need to have the support of your general manager or somebody, you have to drive the implementation of those recommendations. You cannot accept that the people will just do it, because they don't. Or they'll tell you they have and they haven't, or they'll tinker around the edges.

A crucial element in the organisational commitment to the concept of whistleblowing, is how managers in organisations think about reporters. As mentioned above, an analysis of agency procedures has been undertaken (Roberts, 2008, p.246). The criterion 'commitment to protect and respect internal witnesses' was rated ninth out of the 24 items across the 175 sets of proceedings analyzed. This indicates that at a very basic level, explicit commitment from the CEO and the executive to the protection of persons who make reports, frequently needs to be strengthened.

In summary, the information collected in the study indicates that commitment to an investigation process and a commitment to rectifying the wrongdoing are necessary and important factors in an effective system. While organisations express their commitment to the process, in many cases the practical implementation falls short of being optimal.

'In principle' commitment among first- and second-level managers

As noted earlier, employees were surveyed on a variety of attitudinal measures. The items included in the Employee Survey were:

- organisational citizenship behavior;
- whistleblowing propensity (both individual and organisational);
- trust in management;
- job satisfaction;
- confidence in whistleblowing legislation; and
- management response to whistleblowing (perceived level of openness to employee reports on the part of management).

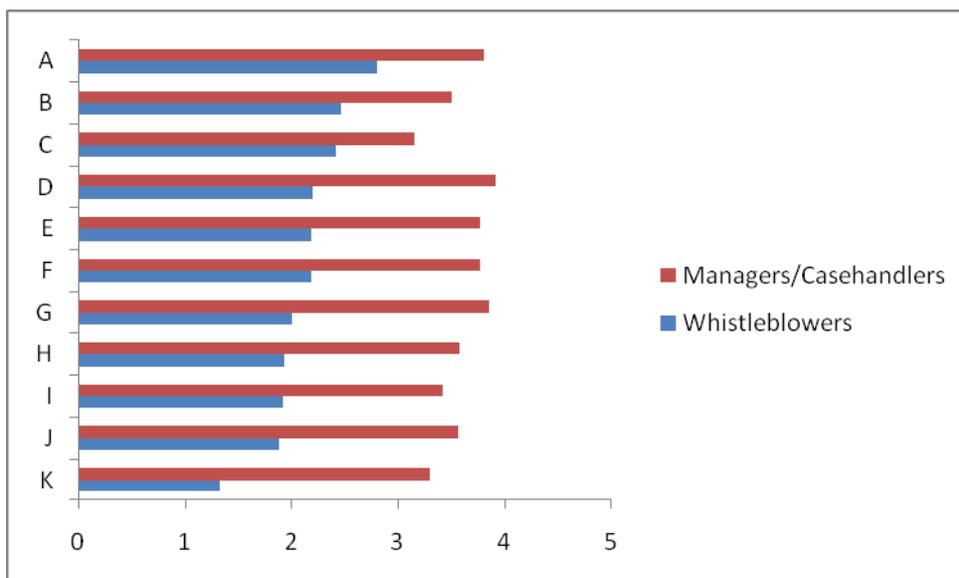
As described Chapter 3 of the first report (Wortley, Cassematis, & Donkin, 2008), on the first four attitudinal measures mentioned above, managers rated more highly. With one exception (the 'industry' element of organisational citizenship behavior), managers rated more highly with a statistical significance $p > 0.01$ (Mazerolle & Brown, 2008).

Table 1.1. Comparing managers with non-managers: Confidence in management response and confidence in legislation

	Managers	N	Non-managers	N	t-value
Confidence in management response	3.50	1609	3.24*	5880	6.4
Confidence in legislation	3.27	1039	3.13*	2859	13.4

* p>0.01

As shown in Table 1.1 above, on the other two dimensions (confidence in management response and confidence in legislation) managers also rated more highly with a statistical significance $p>0.01$. These analyses indicate that managers have higher levels of confidence than non-managers in these dimensions of organisational commitment.

Figure 1.2. Comparing managers with internal witnesses: on the question of how committed is the organisation 'to dealing respectfully and properly with reporters'

Note: Internal Witness Survey, q61 and Managing the Internal Reporting of Wrongdoing Survey, q59); Because cell sizes of <5 were omitted, only 11 of the 15 case-study agencies have been included.

Figure 1.2 demonstrates this distinction even more starkly. The analysis is of the results from surveys in 11 case-study agencies. The variation between whistleblowers and Managers/Case-handlers on the question of how committed is the organisation 'to dealing respectfully and properly with reporters'. (It should be noted that the respondents to the internal witness survey were less likely to have confidence in their organisations than respondents to the employee survey).

This almost uniform difference in attitudes is very relevant to the issue of organisational commitment. In some respects, it is not surprising that managers hold more positive views of the efficacy of the organisational policies and procedures than non-managerial staff to

whom they apply. It also needs to be noted that the length of time with the organisation of those managers who participated in the Employee Survey was 13.6 years, compared to 9.56 on non-managers. Because of their position and length of tenure, it would be expected that managers would have a better understanding of the effectiveness of the policies and procedures, but, being human, they would tend to be less critical of an area of administration for which they are responsible.

However, as will be discussed below and in the next section, the research has also shown some serious issues with line managers' understanding of the processes involved, and their involvement in the management of reports from their staff. It would appear that while there is strong evidence of management knowledge and commitment to whistleblowing procedures, there is still some way to go in having consistency in application.

Managerial understanding of benefits and importance

General managerial understanding of the benefits and importance of having whistleblowing mechanisms is not just an issue for the executive of organisations, discussed above, but for all line managers.

As discussed in Chapter 2 of the first report (Brown *et al* 2008), organisations often recognise the benefits of whistleblowing, particularly the information that reports of wrongdoing can provide. In the case study agencies, case handlers and managers were asked to rate the importance of reporting by employees compared with other ways in which wrongdoing comes to light. Reporting by employees was rated as most important. More detail of the findings is presented at Table 2.13 (p.45) of the first report. This indicates that managers, on balance, recognise the value of whistleblowing as an important mechanism for bringing forward wrongdoing in organisations.

Table 1.3. Manager, casehandler and integrity casehandler ratings of the usefulness of employees' reports of wrongdoing

1 = strongly disagree, 5 = strongly agree	N	Mean	Standard Deviation	Ranking
Most reports are wholly significant (all information merits investigation)	762	3.29	.870	1
Reports often contain inaccurate or mistaken information	758	3.18	.864	2
Most reports are partly trivial and partly significant	757	3.13	.864	3
Reports are often about personal grievances <i>and</i> matters of public interest	757	3.08	.810	4
Reports are offered entirely about personal or employment grievances off	762	2.99	.964	5
Reports are often entirely about matters of public interest	762	2.74	.819	6
Reports are often vexatious (and abuse of process)	761	2.49	.926	7
Reports often contain intentionally false information	761	2.31	.854	8
Most employee reports are wholly trivial (no information on merits investigation)	761	2.12	.767	9

As well, managers and case handlers were asked questions about the nature of the reports that are brought forward by employees, as shown in Table 1.3. This item gives an insight into how managers and case handlers think about reporters. The statement with the strongest agreement from managers was ‘Most reports are wholly significant (all information merits investigation)’. The detailed results are described in the table below (see also Table 2.12, p.45 of the first report).

Again, an examination of the ranking above indicates that managers, overall, value the information that employees bring forward in their reports.

When interviewed, most managers and case-handlers were broadly positive about reporters. However, as discussed later in sections 2.2, 3.2 and 3.4, issues of motive, problems provoked by mixed public interest and private grievances, and possible vexatious complaints can also provoke more ambiguous and negative views among managers.

In some cases, managers expressed extremely negative views about reporters; indicating that at the line manager level, organisations grapple with the difficult issue as to how the motives of the reporter should influence the organisational response. While it is easy for an outsider to separate out the content of the report from the individual personal issues of the reporter, that is not such an obvious distinction for the supervisor.

An associated theme coming out of the analysis of interview responses was that staff were perceived as sometimes making reports because they were not aware of issues pertaining to the case that senior managers were aware of. This is a quite patronizing response presuming that employees at a lower level were only making the report because of a misunderstanding.

Confronting the reality of these mixed views, and managing more negative views among managers represent a clear and important challenge for organisational commitment to a whistleblowing program to be properly embedded.

Managerial knowledge of policies

As has been noted in this report and the first report, managers are generally more positive about how their organisations handle reports of wrong doing than their employees. In Chapter 10 (Roberts 2008) of the first report, it was noted that this optimism, often misplaced, extended to their understanding of the effectiveness and comprehensiveness of whistleblowing procedures. This has implications for organisations. Not only should the procedures be reviewed to ensure that they are comprehensive and effective, but efforts are needed to ensure that line-managers are more fully aware of the reality of their policies and procedures, notwithstanding that there may inevitably be a degree of skepticism among staff about the policies and their implementation. Sensitivity to this issue should assist line managers in dealing effectively with reports of wrongdoing.

1.2. Whistleblowing policy

Checklist items:

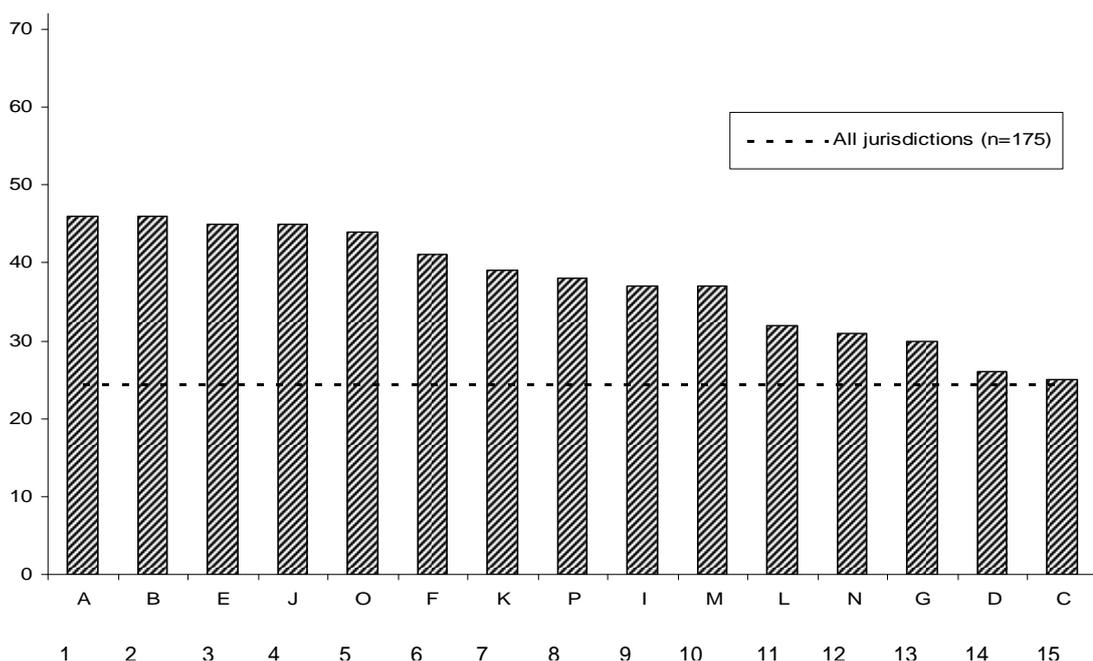
- Easy to comprehend whistleblowing policy, including guidance on procedures, relation to other procedures, and legal obligations
- Broad staff awareness of the whistleblowing program
- Broad staff confidence in management responsiveness to whistleblowing
- Broad staff awareness and acceptance of responsibility to report

Comprehensible whistleblowing policy

A key part of this research project was the examination of agency policy and procedures dealing with the reporting of wrongdoing and the support and protection of reporters. As mentioned earlier in this chapter, 175 sets of whistleblowing procedures were evaluated against 24 criteria. The analysis in the first report showed a positive correlation between the comprehensiveness of agency procedures, overall, and a range of positive outcomes from the management of whistleblowing.

How did the case study agencies compare in terms of the comprehensiveness of their procedures? Figure 1.4 ranks most of the agencies in terms of their procedures' comprehensiveness score (out of 72) (one agency's procedures were not available at the time of analysis). The mean score across all 175 agencies was 24.4 out of 72. The score for all case study agencies above this average, and the mean score for the subset of case study agencies was much higher at 36.2. This difference most probably reflects the organisational emphasis that most case study agencies have given to the issue of the reporting of wrongdoing.

Figure 1.4. Comprehensiveness of procedures by case study agency (score out 72)



One criterion was the ease of comprehension of procedures. This criterion rated highly but this was, generally speaking, more influenced by the variable quality (or indeed their absence) of the other criteria rather than the drafting ability of the organisations.

In commenting about the ease of comprehension of the procedures, the research team is cognizant that each organisation will have an array of procedures, written in their own organisation style, and that whistleblowing procedures are just one element in this.

In assessing the ease of comprehension of the procedures the following issues came to light:

- Many organisations provided their reporting procedures in more than one place. A common pattern was for one set of procedures on the code of conduct which outlined ethical responsibilities for reporting, another set of procedures for the process of reporting of wrongdoing, and a further set of procedures dealing with investigation processes. Even after becoming experienced in different policies, it was often difficult for the researchers to find and to assess all the key information in the policies where it was provided in a number of different places. This must be even more difficult for staff in an organisation who may be junior, relatively unskilled in reading policies and procedures and under some degree of stress because of their situation;
- Another common feature of whistleblowing procedures was the tendency to develop procedures closely aligned to the legislative structure. Consequently, some procedures read like an explanatory memorandum for a statute and the legalistic nature of the language made comprehension difficult; and
- A number of organisations demonstrated that it was possible to write their procedures that were logical, user-friendly and using simply expressed language. These procedures stood out from the rest as being easy to read and easy to understand.

Reporting procedures should be prepared for different audiences. An approach that some organisations adopted, and which the research team found very helpful, was to have a 'user-friendly' guide for potential reporters with separate procedures specifically designed for line managers, investigators and support personnel.

Potential reporters are going to want something that is simple, and easy to read and which gives them confidence that they can proceed with their report. On the other hand, line managers, investigators and support personnel may need to have material which is more detailed and procedurally oriented. It is worth noting that one of the industry partners in this project, the Queensland Government (2009a, b) has recently promulgated separate guides for potential reporters and for managers.

Staff awareness of the whistleblowing program

To be effective; whistleblowing policies and procedures need to be widely promulgated throughout the organisation. The importance of the promulgation of whistleblowing procedures in encouraging reporting can be seen from Table 1.5 based on the results of the Employee Survey. The table compares the knowledge about the existence of procedures with actions taken to report wrongdoing or not to report it. The awareness of procedures is highest among the reporters and lowest with non reporters. Of concern must be a high level of ignorance about whistleblowing procedures among those who did not report. From this analysis, the conclusion can be drawn that awareness of whistleblowing policies and procedures encourages employees to report wrongdoing.

Table 1.5. Knowledge of procedures

Category	N	Aware of procedures %	Reported agency did not have procedures %	Did not know %
Reported observed wrongdoing	2155	82.3	3.0	14.7
Did not report	3318	71.4	4.2	24.4

All significant at p=0.001 level using Chi-Square test

The analysis above is based upon the totality of the respondents in the Employee Survey. It is useful to look at the potential difference between organisations in terms of knowledge of whistleblowing policies and procedures. As shown in Figure 1.6, the level of employee awareness varied significantly between the case study agencies.

As shown in Figure 1.7, also from the case study agencies, the Casehandler and Manager Survey also asked respondents to indicate whether the process used by their organisation to communicate policies to staff is systematic or ad hoc (Q18). Across all jurisdictions, close to half of all casehandlers and managers believed that the process was very or quite systematic, but this varied widely across agencies, ranging from 18 per cent in Agency K to 72 per cent in Agency J.

Figure 1.6. Employee awareness of relevant policies or procedures

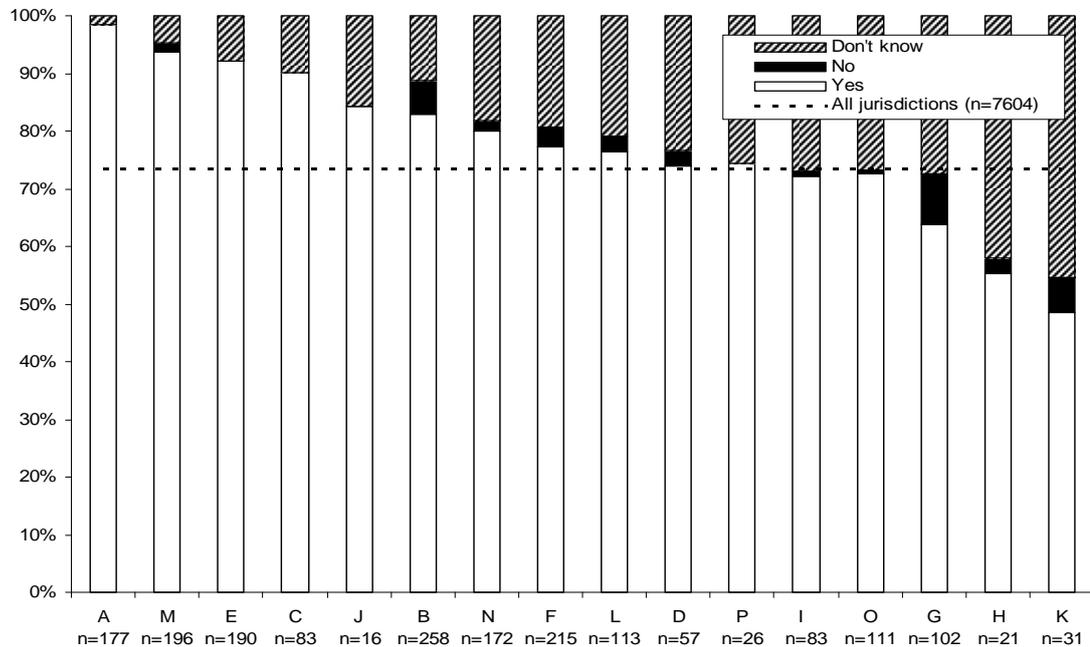
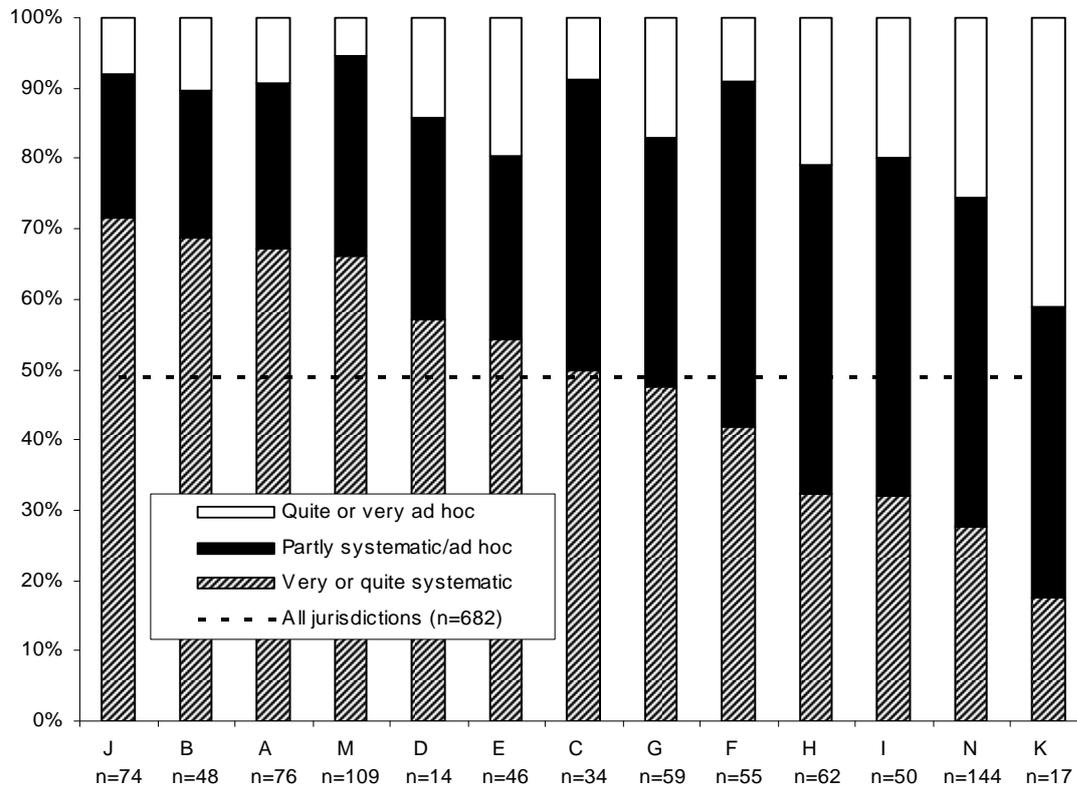


Figure 1.7. Systemic or ad hoc communication of policies by case study agency

Casehandler and Manager Survey Q18



It is evident that there are differences between organisations when it comes to awareness about policies and procedures. Clearly, in those organisations where there is a high proportion of employees who either do not know about the agency's whistleblowing policies and procedures, or, worse still deny that they exist, the analyses above would indicate that there will likely to be a lower rate of reporting wrongdoing and lower trust in the organisation that reporting is going to be looked upon sympathetically.

A key element in effective procedures is the transmission to employees of knowledge and understanding of available legislative protections. The first report indicated:

- significant jurisdictional differences in the proportion of respondents who believed they were covered by legislation (Table 6.5);
- great variations in the proportion of respondents who believed they were covered by legislation at agency level (Table 7.1);
- managers tended to be more confident in the effectiveness of legislation than non-managers (Table 7.7);
- a strong correlation between the belief that an employee is covered by relevant legislation, and the likelihood they will blow the whistle according to the whistleblowing propensity scale (Table 7.1);
- at an agency level, employees who believed that they were covered by legislation also likely to believe that management's response to whistleblowing would be positive, including protection of their rights if they suffered reprisals (Table 7.2);

- in one jurisdiction, Queensland, low confidence in legislation appeared to correlate with the lowest level of trust in the management response, along with higher levels of reported mistreatment by managers (Table 7.5); and
- while there was no link discovered between confidence in legislation and reporting rates, a statistically significant relationship was found between confidence in legislation and inaction rates (Table 7.6).

The findings are part of indicate that organisations still have a long way to go in terms of making their employees aware of their legislative protection, and that this awareness is an important factor in promoting reporting and ensuring employees that they will be protected. For these reasons, it is a vital element of organisational commitment to whistleblowing.

The analyses above, and the insights gained from managers, case handlers and representatives of the case study agencies demonstrate that there is much that agencies can do to demonstrate commitment by increasing awareness. This includes publicly acknowledging those staff members who have made disclosures that were found to be valid as acting in the organisational interest; and finding constructive ways, at the conclusion of major incidents, to ensure that wrong doing that has occurred in the organisation is acknowledged and openly talked about. As yet, relatively few agencies are pioneering such approaches.

Staff confidence in management responsiveness to whistleblowing

In addition to general staff awareness of the program, a recurring theme throughout the research is the importance of staff confidence that management of their organisation will take reports seriously and protected them against reprisals. As outlined in Table 3.13 (p.72) of the first report, lack of confidence in the management response is one of the key reasons why employees did not report observed wrongdoing.

Table 1.8 below, based upon the Employee Survey, looks at the relationship between awareness of procedures and three measures:

- propensity to report wrongdoing, which focuses upon attitudes towards the act of reporting wrongdoing;
- confidence that whistleblowing legislation will protect the employee; and
- belief by respondents that, were they to report wrongdoing, the organisation would take it seriously and protect them.

The results indicate that awareness of agency policies and procedures correlate positively with employees' attitudes towards reporting wrongdoing. They confirm that organisations can and should actively pursue strategies to raise confidence among employees that whistleblowing is welcome and that reporters will be protected. They reinforce the value to agencies of promulgating easy to comprehend whistleblowing policies and procedures, including guidance and legal obligations; and of resourcing training and awareness packages that will increase staff awareness of the whistleblowing program and engender staff confidence in management responsiveness to whistleblowing.

Table 1.8. Comparison of awareness of procedures with whistleblowing propensity, confidence in legislation and trust in management's response to whistleblowing

	N	Whistleblowing propensity (Q15 as a scale)	Confidence in legislation (Q17 as a scale)	Attitude on how management would respond to report of wrongdoing (Q18 as a scale)
Aware of procedures	5747	3.88	3.21	3.37
Reported agency did not have procedures	250	3.44	2.78	2.90
Did not know	1665	3.38	2.82	3.10

All significant at p=0.001 level using Kruskal-Wallis H test

Responsibility to report

The level of organisational commitment to a whistleblowing program can also be measured in terms of the level of staff acceptance that is their responsibility to report public interest wrongdoing, rather than simply an exercise of a right.

Agencies were asked about whether or not employees were under a legal obligation to report. 59.2 per cent said yes, 17.1 per cent said no with 23.7 per cent not responding to the question (Survey of agency practices and procedures, question 11, N=304).

As shown in the first report (p.71), a sense of ethical responsibility to report was the strongest reason for doing so, given by those who reported wrongdoing across all agencies surveyed. However some 57 per cent of respondents to the employee survey who said that they had witnessed wrongdoing did not report it. It is almost certain that many of those employees came from agencies that had reported that they had a legal obligation to report. Also, as outlined in the first report (Wortley, Cassematis, & Donkin, 2008), the employee survey found that 36.4 per cent in respondents who did not report observed wrongdoing nominated the reason that they did not think that anything would be done about their report as a reason for not reporting. Also 24.4 per cent indicated that the reason for not reporting was a fear of reprisal. These are issues for which the organisation has control.

Even among those organisations where there was a clear and publicized legal requirement to report (for example, in police services), managers reported that they were aware of the incidences where clear wrongdoing was not reported. While it is clear that having a legal obligation to report does not solve the issue of non-reporting, generating a more general sense of responsibility to report is central to the type of organisational climate – if supported by ‘tone at the top’ – in which a whistleblowing program is likely to be effective.

1.3. Resources

Checklist items:

- Staffing and financial resources dedicated to implementation and maintenance of the program, commensurate with organisational size and needs
- Specialised training for key personnel, and inclusion of whistleblowing management issues in general induction and management training

Staffing and financial resources

As noted in the Introduction, the public sector agencies studied came in all shapes and sizes, and with a wide variety of functions. Consequently, there is no fixed formula as to what resources organisations should be putting into whistleblowing programs.

In the course of the research project, a number of case study agencies were examined in some depth. Set down below is some indication of staff resources that are allocated in a variety of organisations, additionally to conventional investigation, internal audit, and ethical standards resources. This should not be taken as an exhaustive list but rather as illustrative of the range of approaches:

- A suburban local government body allocates all the duties relating to whistleblowing to one part-time officer. That officer prepares and maintains the organisation's whistleblowing policies and procedures, advises the executive on those issues, and undertakes basic counseling and support training;
- A very large Department of State has a small centralized unit to handle whistleblowing matters and works through support officers in the various divisions and branches of the organisation;
- Another large State department allocates whistleblowing functions to three workplace assistance officers;
- A Commonwealth Department of State has a small central whistleblowing unit which works through the harassment officer network in the organisation; and
- A large police service has nine full-time staff allocated to whistleblowing matters.

The representatives of case study agencies were realistic about the fact that their function had to compete with all the other governance functions in the organisation for resources. However those responsible for whistleblowing programs were able to make good efficiency arguments for their programs, including the benefits of resources put in to awareness raising and training, for fewer cases becoming difficult and complex and the adverse effects on staff minimized. One organisation went as far as quantifying the resources being put in to awareness raising and training and compared this against the fall in the cost of investigations.

A key question confronting all agencies, is what scale of investment in a whistleblowing program – and particularly in whistleblower protection and support – is commensurate to the size and need of the agency. The question of appropriate models and scales of programs depends on a clear choice being made, suitable for each agency. This choice is discussed in section 5.1.

It is worth noting however, as discussed in the first report and below, that there are currently many employees who come forward with reports of wrongdoing that are not handled by the formal whistleblowing functions within the organisations, and therefore may not be formally 'counted' for the purpose of determining agency caseloads.

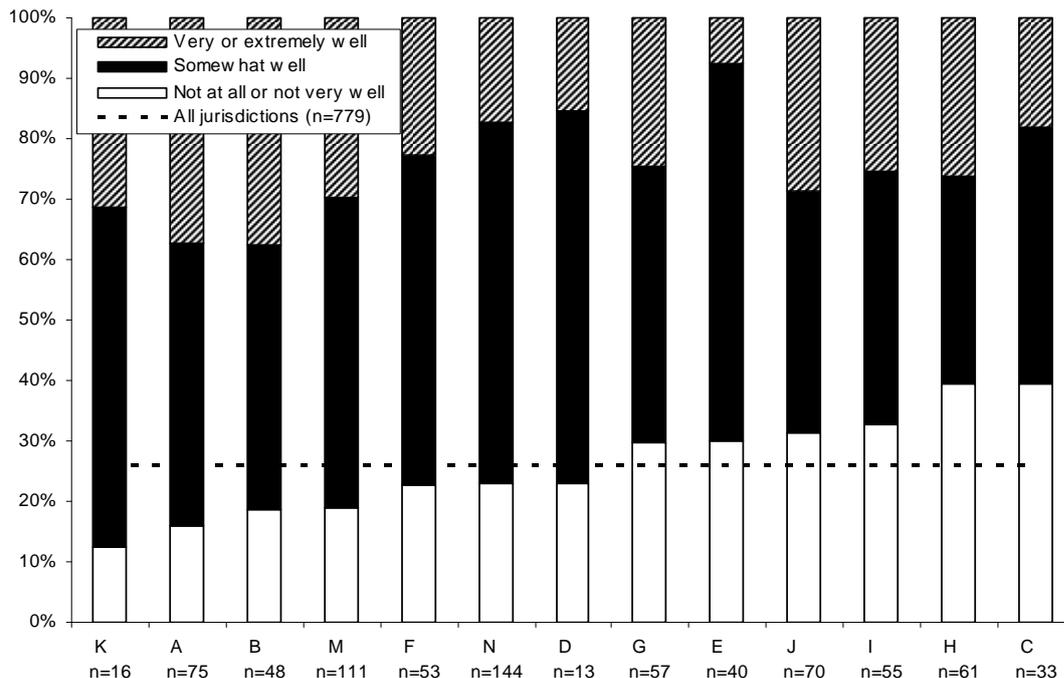
In determining the level of resources necessary for the program, organisations should therefore avoid resourcing only to the known number of reports. As the representatives of the case study agencies noted, a proactive approach to whistleblowing issues is also likely to encourage more people to seek the formal processes and support mechanisms. Many organisations need to make the shift from resourcing what they know is occurring to resourcing for what they think may be occurring, or is likely to occur. In any event, resources are a fundamental component of organisational commitment.

Specialist and general training

The first report demonstrated the need for improved training for key personnel dealing with whistleblowing issues, especially in the field of investigations (pp.306-7). In the survey of agency policies and procedures, organisations were asked to comment on the training and qualification of investigators. 39.4 per cent indicated that authorized staff had no particular training and another 35 per cent nominated informal or on-the-job training. Only 9.8 per cent nominated professional training with a 15.8 per cent nominating a mixture of professional and other training.

As also observed in the first report (Mitchell, 2008), the level of training for investigation was not found to be at a very high level. There was inconsistency in the level and type of training of investigators, with low levels of training in circumstances where a much higher level could reasonably be expected. Associated with this was the finding that many of the staff involved were aware of these inadequacies.

Figure 1.9. Casehandler and manager perspectives on how well training prepared them for handling reports of wrongdoing (proportion)



The Casehandler and Manager Surveys also asked respondents about the training they have undertaken on handling reports of wrongdoing, as well as how effectively this training prepared them (Q22 & Q23). Figure 1.9 shows the responses by agency to this latter question. Training clearly needs to be a priority for agencies, with one in four casehandlers and managers across all jurisdictions indicating that they are not at all or not very well trained for handling reports of wrongdoing.

As discussed in section 4.3 of this report, the specialist nature of reprisal allegations also requires careful consideration.

1.4. Evaluation and engagement

Checklist items:

- Regular evaluation and continual improvement in the program
- Positive engagement on whistleblowing issues with external integrity agencies, staff associations and client groups

Evaluation and continual improvement

As with any program within an organisation, it is necessary to conduct a regular evaluation of its effectiveness. Noting that most public sector organisations are going to have standardised procedures for the evaluation of programs, the research team considers that the following would be desirable:

- as covered in more detail in the next section of this report, a formalised system for recording all reports of wrongdoing, the outcome, details of the support provided for the reporter and any support necessary for a person who is the subject of allegations;
- an estimate of the resources that are allocated to particularly difficult and complex cases;
- regular survey of the attitude of managers towards the process and policies of whistleblowing; and
- regular survey of employees to determine the level of awareness of the whistleblowing policies and procedures and trust they have in these procedures.

It is also suggested that organisations ensure that the whistleblowing function is included in the organisation's governance structure, and embedded in other organisational systems as recommended in section 5.4. This would ensure that evaluation of the effectiveness of the program would be subject to regular scrutiny by an audit committee or its equivalent.

External engagement on whistleblowing issues

A final important indicator of organisational commitment is external engagement with key stakeholders on whistleblowing issues, including for the purposes of evaluating the program (as discussed above). Casehandler and manager interviews, and the workshop discussions confirmed the value of engaging with external interest groups, unions and professional associations, and external integrity agencies to ensure the transparency of the program.

Relations with external integrity agencies was identified as especially important, albeit complex. The very nature of a watchdog agencies means that there is inevitably going to be some degree of tension with those organisations and managers whom they are oversighting. This issue was explored in the interviews with case study agency managers and case handlers.

Overall, the responses indicated that the attitudes of managers and case handlers towards the external agencies were positive. Many managers and investigators expressed the view that the external agencies were able to bring to cases a degree of independence which was a very valuable in resolving issues. Also, many managers acknowledged that, in some areas, like investigations and the handling of protected disclosures, the integrity agencies had valuable skills and knowledge.

There were also some indications of tensions between organisations and the integrity agencies. Some managers criticized the integrity agencies for being too focused upon procedural issues. The following quotes from respondents give a sense of the variety of attitudes, from:

Interviewer: So how would you describe the relationship between your organisation and the integrity agencies?

Manager: I think it's good but I think we've worked fairly hard to make it good I have certainly developed good working relationships with the (integrity agency) in terms of making sure that we follow our procedures and respond to everything that they put to us in a timely way. We disagree on stuff but I think the fact that we've got a reasonably good working relationship works well. We try very hard not to be defensive.

To:

... the (integrity agency) have their heads up their own backsides ... too full of their own self-importance and they think they are above reproach – very dangerous.

If an organisation is committed to encouraging reports of wrongdoing and protecting those who come forward with those reports, a good relationship with the relevant integrity agencies is a very important. Our study indicated that, with a few exceptions, most managers recognized that reality.

Also, it is clear that there is some obligation upon those integrity agencies to deal with organisations realistically. The first report (p.310) recommended that governments ensure at least one coordinating integrity agency has the statutory authority and capacity to respond readily to such needs.

Sample content for policies & procedures

Management commitment

This organisation encourages any staff member who considers that he or she has witnessed wrongdoing to come forward and report it.

We aspire to an organisational climate where all staff feel confident and comfortable about reporting wrongdoing.

We believe that we have an obligation to deal with wrongdoing in this organisation. We believe that reporting wrongdoing is in accordance with this organisation's ethical culture, in particular, integrity, honesty and openness. Further, this organisation believes that staff who come forward with reports of wrongdoing are acting as exemplary organisational citizens by assisting us in promoting integrity, accountability and good management.

When staff come forward with information about wrongdoing, we commit to:

- Protecting the staff member from any adverse action taken as a result of making the report. Further, we undertake to protect the, dignity, wellbeing, career interests and good name of all persons involved when a report of wrongdoing is made. Any bullying, harassment unfair treatment, victimisation or discrimination that results from a report being made will be treated as a breach of our disciplinary procedures;
- Dealing with the report thoroughly and impartially;
- Where some form of wrongdoing has been found, taking appropriate action to rectify it; and
- Keeping the staff member informed of progress and the outcome.

While staff members who have witnessed wrongdoing are urged report to someone within the organisation, we will respect and support the staff member if a report is made to an appropriate external body, like the Ombudsman. We will make very effort to assist any external body dealing with a report of wrongdoing in this organisation to bring the matter to a satisfactory conclusion.

2. Encouragement of reporting

'If in doubt, report'

Encouraging the reporting of wrongdoing is the first major objective of any whistleblowing program. Across the agencies studied, the research confirmed that this objective is well reflected and well-embedded in most whistleblowing programs and procedures.

A very large part of the procedures and policies assessed, and the experience of individuals surveyed and interviewed, concerned staff willingness to report, the ease of reporting, and familiarity with the means of doing so.

Although a considerable of reporting of wrongdoing by public employees occurs – as described in chapter 2 of the first report – the project also gathered considerable evidence of the reticence of employees to report, or to do so in a timely fashion. Some of the reticence may relate to deficiencies in formal systems, including the complexity and lack of comprehensiveness of formal whistleblowing legislation, providing barriers to the establishment of an 'if in doubt, report' culture within organisations and the general public sector (see first report, chapter 11).

More pervasive problems relate to the reporting climate within organisations, where the bulk of evidence of wrongdoing is identified but where employees and organisation members can face natural disincentives to stay silent – ranging from a desire to protect one's career and avoid workplace conflict, to uncertainty over the seriousness of the problem, to fear of reprisal, to unwillingness to 'rock the boat' or challenge friends and colleagues.

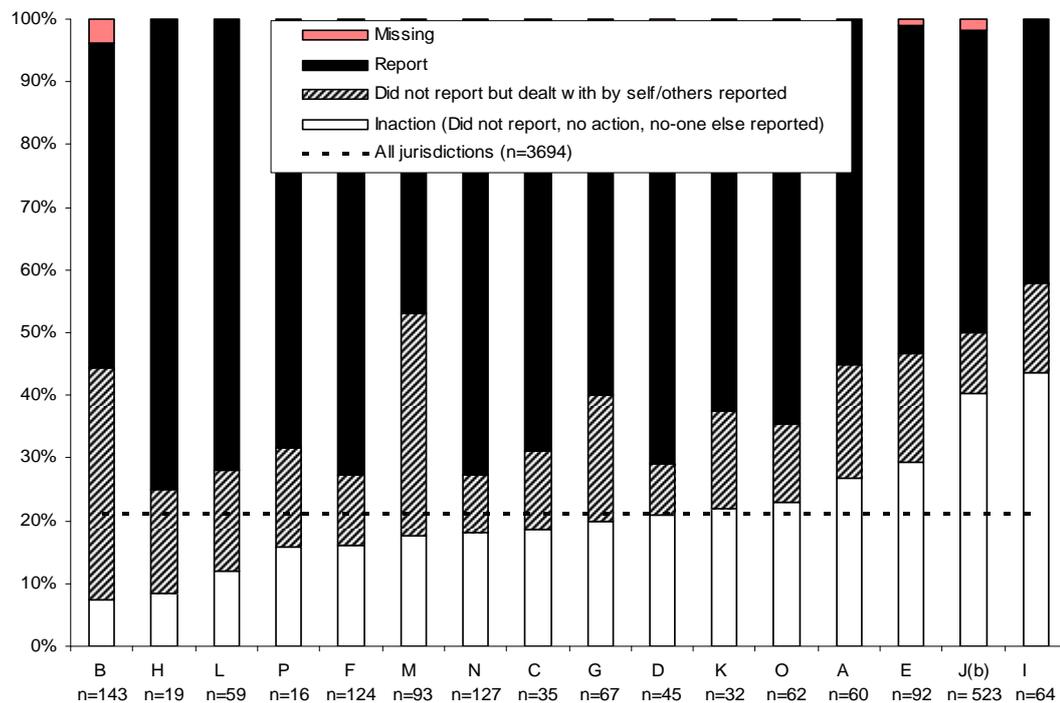
As shown in Table 2.1, managers and casehandlers in the case study agencies were, on average reasonably ambivalent about their organisations' success in encouraging the reporting of wrongdoing. Figure 2.2 shows the significant variation in the level of success of the individual agencies. Across the study, 29 per cent of respondents to the employee survey who had witnessed wrongdoing that they considered very or extremely serious, did not report it or take any other action, even though no one else had reported it (the 'inaction rate'; first report, p.48). Figure 2.2 shows the case study agencies ranked by inaction rate. While a majority of the agencies were at or below the national mean, a third were above it, confirming the varying degrees of their success in establishing a successful whistleblowing program at the time of the research.

Table 2.1. General views of managers and casehandlers

Issue	Case-handlers			Managers		
	Mean	SD	N	Mean	SD	N
Success of organisation in encouraging reporting of wrongdoing (1=not at all 5=extremely)	3.03	.96969	340	3.20	.87088	535

Figure 2.2. Inaction rate – All respondents who saw very or extremely serious wrongdoing (proportion)

Employee Survey Q26, Q35a, b and c



The research into these varying organisations confirms the importance of a number of key elements if a whistleblowing program is to successfully encourage reporting. Some are basic and practical – clarity as to who is covered, what is covered, and how the organisation should coordinate its handling of different types of reports.

A further key element is the availability of multiple reporting pathways, whereby employees can bring forward reports of wrongdoing either to their line managers – currently the recipients of the vast majority of whistleblowing disclosures – to alternative reporting points within the organisation, or externally to agencies like Ombudsman’s Offices and anticorruption bodies. Organisations are encouraged to advise employees that these bodies are an alternative point where reports of wrongdoing can be received. As well, they should maintain close and positive working relations with these organisations.

The research shows that the awareness and accessibility of these alternative pathways may be vital to not only maximizing the chances of employees reporting, but of ensuring that disclosures are properly handled, and the whistleblower effectively supported.

A final key component in encouraging reporting is for the organisation to have credible mechanisms for offering anonymity, backed up by realistic undertakings of confidentiality, for reporters. While this raises the first of many complex issues in the management of disclosures, the research suggests it is a worthy objective that every organisation should aim for. Where employees believe that making a report of wrongdoing will be immediately spread through the informal gossip grapevine within the organisation, it is unlikely that they will come forward with reports of wrongdoing.

2.1. Comprehensive coverage

Checklist item:

- Clear identification of all key categories of organisation members (employees, contractors, employees of contractors, volunteers, at-risk clients) needing inclusion in the whistleblowing mechanism

While the coverage of whistleblowing policies and procedures may be shaped by the legislative system in which the organisation is operating (Brown 2006), it is also open to agencies to set many of their own parameters for whom the whistleblowing program is intended to encourage and attract.

Some whistleblowing legislation recognises 'any person', including members of the public, as able to make a public interest disclosure. In fact, this is not consistent with accepted definitions of a whistleblower as an 'organisation member'. Nevertheless, it is important for organisations to identify those classes of complainant crucial to the agency, for whom the risk of detrimental action represents a major barrier to disclosure of wrongdoing.

Most organisations focus upon serving employees in terms of their whistleblowing policies and procedures. Some organisations where there is a significant amount of work undertaken by contractors and subcontractors, should focus upon their needs as well. Similarly, a range of volunteers and particular types of 'at risk' clients may need to be able to qualify for an equivalent type of protection and support to employees.

Most policies that were examined as a part of this research project, adequately defined the coverage of the whistleblowing policies and procedures. However, in looking at the interviews with managers and case handlers, there does appear to be an overwhelming focus upon current employees and there should be an emphasis in the training upon notifying managers that they may receive reports from other sources and the implications of this.

This issue is dealt with in the sample procedures set out below.

2.2. Defining reportable wrongdoing

Checklist items:

- Clear advice on types of wrongdoing that should be reported
 - Clear advice on appropriate reporting points for all different types of wrongdoing (including grievances as opposed to public interest disclosures)
 - Clear advice on level of information required/desired
 - Clear advice that staff are not protected from the consequences of their own wrongdoing by using the whistleblowing mechanism, nor for false or deliberately misleading information
 - Clear advice that staff can nevertheless seek and be granted immunity from consequences from their own less serious wrongdoing, when reporting more serious wrongdoing by others or by the organisation
-

Types of wrongdoing that should be reported

This is another area of whistleblowing policies where legislation may help define – or limit – the degree of discretion that agencies have in defining the types of wrongdoing that should be reported. In drafting policies and procedures, organisations should have a mix of defined issues that can be reported upon, but also a broader ‘catch-all’ provision, in keeping with the ‘if in doubt report’ message.

A suggestion on how this issue can be dealt with is covered in the sample procedures.

One benefit of having a broad ‘catch-all’ provision relating to the types of wrongdoing that can be reported is that organisations can collect valuable intelligence about issues that may, on a case-by-case basis, appear to be minor but would indicate a serious pattern when looked upon in aggregate. For example, where an organisation receives a large number of reports about minor fraud which could indicate some more serious systemic problem.

It is undesirable for any type of wrongdoing to be so closely defined that line managers and reporters believed that the issue fell outside the policies and procedures on a technicality. The bottom line is that organisations are better positioned by making the decision on whether or not a particular issue should be dealt with as a whistleblowing report on a day-to-day basis rather than having it set out in some form of formal procedure.

One of the implications of this approach will be that there is an added responsibility upon line managers to give feedback to reporters if an issue is determined not to be worthy of further action. That feedback should be given as soon as possible.

Reporting points for all wrongdoing types

As discussed in Chapter 2 of the first report (Brown, Mazurski, & Olsen, 2008), there is a considerable degree of complexity in unraveling employment related grievances and public interest wrongdoing. The methodology used in the study was to present survey participants with an almost exhaustive list of types of issues that could be reported. These ranged from a serious public interest matters, like corruption and perverting the course of justice, through to workplace type grievances, including personnel actions and bullying.

The first issue that was addressed was to categorize that list of all the wrongdoing into personnel and workplace grievances and public interest issues. The research team recognized that such a distinction is to an extent arbitrary because some workplace grievances can become so endemic and destructive that they then become a public interest issue. As outlined in table 2.2 in the first report, 48.7 per cent of respondents to the employee survey (N=7663) reported that they had observed wrongdoing that was categorized as personnel and workplace grievances. 22.2 per cent indicated that the wrongdoing that was most serious (somewhat, very or extremely). Noting that respondents were able to nominate more than one type of wrongdoing of served, the category of personnel and workplace grievances was the largest of the seven categories of wrongdoing, five of which were clearly public interest issues and the other, reprisals against reporters.

The second issue that complicates distinguishing between employment related grievances and public interest wrongdoing, is that some reporters experience an employment related grievance that is occurring at the same time as they are reporting wrongdoing. In the survey of reporters, 41.6 per cent (N=214) indicated that at the time they had reported wrongdoing they were experiencing conflict or serious disagreement with the managers or supervisors.

That proportion included employees who were reporting a workplace grievance. 21.6 per cent (N=74) were reporting that they were making a public interest disclosure at the same time as they had that disagreement with the managers or supervisors.

Figure 2.3. Sample advice to public employees regarding reporting points



Source: Queensland Government 2009a

As indicated earlier, the coincidence of different issues has the potential to complicate the way in which an organisation responds to disclosures. Figure 2.3 provides a good example of the type of advice that can be given to employees to help them understand that different

types of wrongdoing may have different reporting points, and be handled in different ways. The crucial thing confirmed by the quantitative research and the workshops, is the need for agencies to provide for all wrongdoing types, whether through coordinated advice about the relevant internal reporting points, or through a 'one stop shop' approach, such as a general all-purpose complaints and disclosure line, as employed by some case study agencies.

Irrespective of where disclosures are received, careful assessment is needed to ensure that different elements of a disclosure are all dealt with appropriately. The problems raised by this issue, especially in light of the fact that the vast bulk of disclosures are received by supervisors and line managers, are discussed in detail in section 3.1.

Level of information required/desired

This issue closely relates to the discussion above on the types of issues that can be reported. Organisational policies as well as the practical implementation need to steer the difficult path between bringing forward genuine concerns of employees, and setting such a low threshold of reporting that line managers are swamped with unfounded suspicions.

Setting the bar too high would mean that reports would be discouraged because of the reporter believes that a high level of proof is required before the report is made. It may also jeopardize a proper investigation, or increase the risk of reprisals or other conflict, by causing the employee to try and investigate the matter themselves in order to gather 'harder' evidence before coming forward. A suggestion on how this issue can be dealt with is covered in the suggested procedures.

Reporters and involvement in wrongdoing

It is important to the credibility of the whistleblowing program that it is widely understood that it cannot generally be used by employees as a self-protective strategy, in relation to their own wrongdoing or workplace failures. This is important not only for organisational justice, but because misinterpretation of the motives of reporters can undermine the scheme.

The research showed that while most managers in the agencies studied were not limited in their view by negative stereotypes of whistleblowers – for example, as seen in section 1.1, most managers do not think that whistleblowers are overwhelmingly vexatious, or simply seeking to protect themselves by making a report, or to damage others. However, the interviews confirmed that some do hold this view, and that where such negative view is prevalent, it could be likely that there will be discord and reprisal as a result of the report:

We deal with so much stuff that's just nasty and vexatious and you know who the people are and they are able to hide behind the protected disclosure legislation. Because often, sadly, the complainant may be a person who is not performing terribly well in their job and they've got some overworked manager who is trying very hard to deal with their conduct and performance.

So then they make a whole lot of quite serious and largely unfounded allegations, they get protected disclosant (sic) status and then you're left with someone where everyone is terrified to put a performance program or whatever is needed in place, because they'll become subject to detrimental action. And the difficulty with the detrimental action is that the person doesn't have to prove that you've taken detrimental action, you've got to prove that you haven't.

In order to ensure that this issue is not used to undermine the program, it should be clearly stated and understood in the whistleblowing policy of the organisation that the act of reporting does not necessarily protect the reporter from the consequences of their own wrongdoing. This is also usually the legislative position.

The separate but related issue of a reporter providing deliberately false or misleading information is one that is often mentioned in legislation. If this is the case, then the organisational policies need to reflect the intent of the legislation. If it is not covered in legislation then this needs to be dealt with along the lines suggested in the suggested procedures below.

Immunity

This issue is a corollary of the issue above. There may be situations where a reporter comes forward with a report of serious wrongdoing where they have some minor involvement. There may also be situations where an employee is aware that if they disclose wrongdoing by others, or about the organisation, they can anticipate a likely 'payback' complaint against them by other employees or managers – which may have some basis – and therefore be deterred from reporting.

Such payback complaints (and even 'pre-emptive strike' complaints) against whistleblowers or possible whistleblowers do arise. In these circumstances, agencies have to be especially careful not to send a chilling message through the organisation regarding its treatment of whistleblowers, especially where the whistleblower's disclosure may be reasonable but not capable of substantiation – but the payback complaint is easy to prove.

Organisations should provide in their procedures that, in *some* circumstances, they may exercise discretion not to proceed with action against the reporter as a result of their own action. Again, a suggested form of words is provided in the suggested procedures below.

2.3. Multiple reporting pathways

Checklist items:

- Clear *internal* reporting paths and advice on *to whom* and *how* whistleblowing reports should be made, including alternatives to 'up the line' reporting
- Clear *external* reporting paths, including external (contracted) hotlines and advise about relevant regulatory or integrity agencies
- Clear guidance on when reporters should consider reporting outside the normal management chain, or outside the organisation
- Clear advice regarding contact with the media

Internal pathways: how reports are made

Most agency procedures examined had very clear directions for potential reporters in whom they should go to. As noted in the first report, the overwhelming majority of reporters currently nevertheless choose to go to a line manager as their first point of contact. Internal

agency procedures should be structured in a way that recognises that reality. In looking at best practice in reporting it is useful to focus upon some of the more administrative and technical issues on actually how reports are made, including who receives reports.

The strongest item in the agency whistleblowing procedures that were analyzed was the identification of persons to whom reports could be made internally (Roberts, 2008). Most organisations had a multiplicity of reporting avenues.

Table 2.4. Comparison of who are authorised to receive reports and where they are made

Recipient authorized by the organisation (N=304)	%	Actual initial recipients of public interest non role reports (N=835)	%
		My supervisor	65.7
		Another manager more senior than me	15.0
Any manager more senior than the staff member concerned	37.5		
Any senior person staff member has confidence in	29.3		
CEO or equivalent	85.5	Same	3.4
Internal ethical standards/ investigation unit or officer	23.6	Same	1.0
Internal audit/ fraud investigation unit	26.6	Same	1.1
Internal ombudsman or complaints unit/ officer	11.4	Same	0.5
Human resources/ equity and marriage unit	43.8	Same	1.8
Internal Hotline service	7.1	Same	0.2
External Hotline or counseling service	7.7	Same	0.5
Other	40.7		
		Peer support officer	3.5
		Union	1.8
		Government watchdog agency	0.8
		Member of Parliament	0.4
		Journalist	0.1
		Someone else	4.9
No response	2.3		

Note: Survey of agency practices and procedures, question 14 and Employee Survey question 28; and respondents were able to circle more than one reporting pathway

Table 2.4 above shows a comparison between the positions or units within organisations that are authorized to receive reports of wrongdoing and where employees are actually reporting. Employees reported that 81 per cent of the initial reports went to their immediate supervisor or another manager more senior than the reporter. Organisational units like investigation units, internal audit, internal ombudsman etc. received less than 5 per cent of initial reports.

Quite rightly, agencies had a wider catchment of authorized positions that were actually used, and in looking at effective reporting pathways it is clear from the data from employees themselves, that the frontline of managers are going to be receiving the majority of reports.

Interestingly, while 85.5 per cent of responding organisations nominated the CEO, or equivalent, as an authorized recipient, only 3.4 per cent of employees who reported went straight to the CEO. Not surprisingly, many line managers would rather reporters come to them rather than going straight to the CEO. As one interviewee put it:

‘Some staff do not follow the internal processes. They go straight to the top which results in everyone down the command tree falling over themselves to make the problem go away without due process being followed.

The issue of internal hotlines was seen by managers to have particular benefits even though only 0.2 per cent of reports used that pathway for the initial report. As one manager said:

Yeah, I think the hotline’s important because I think the hotline can take the emotion out of it. Because I think a line manager gets the report of wrongdoing and, because of things that have happened in the last five or six years, they tend to think, how can I support myself in this? How can I make sure I don’t get burned by all of this, rather than thinking of, well, what am I really hearing here? Whereas the hotline tends to be - they’re looking at the issue only of what’s been reported. They haven’t got an emotional bank in this or anything.

As the quote above highlights, the recipient of a report needs to stand above personal interest and look to the long term benefit for the organisation while, at the same time, dealing responsibly and professionally with a reporter who is likely to be under a deal of stress. Again, the need for a careful assessment capacity at so many, sometimes relatively junior levels of the organisation is a major issue for the next section.

Internal pathways not only need to be identified, but the recipients of reports need to be able to deal with the reporting event in a nuanced and flexible way.

One indicator that some agencies do not take a sufficiently flexible approach was given by the response to the agency survey, when organisations were asked whether they would accept oral reports from staff: 72.7 per cent said 'yes', but 22.7 per cent said 'no' (with a 4.3 per cent no response rate; Survey of agency practices and procedures, question 20, N=304). Of those agencies that accepted oral reports, the estimated percentage of reports that were oral was 10.3 per cent.

External reporting pathways

Whereas the analysis of agency procedures indicated that internal pathways were comprehensively covered (the highest rating), the information on external pathways ranked 7th (Roberts, 2008, p.246).

In Chapter 4 of the first report (Donkin, Smith, & Brown, 2008), the pattern of reporting is described in detail. With initial reports of wrongdoing from the Employee Survey, 97.1 per cent of reporters used an internal pathway with 2.9 per cent using an external pathway. Of those reporters, 39 per cent made a further report to an internal source, 7.6 per cent made a further report to both an internal and an external source with 2.1 per cent making a further report to an external source only.

For those external recipients of reports, the most common nominated were government watchdog agencies.

Respondents in integrity agencies indicated a similar pattern. As is described in Table 2.5 below, only 4.9 per cent of integrity agency casehandlers indicated that the proportion of public employees to report wrongdoing who had already reported within an organisation was 'none or almost none'.

Table 2.5. Estimate of the proportion of respondents who had already reported internally before reporting to an integrity agency

Proportion of public employees who report wrongdoing to the integrity agency who have already reported it within their own organisation	%
None or almost none	4.9
Around a quarter	13.4
Around half	17.1
Around three quarters	13.4
All or almost all	17.1
No response	34.1

Management of disclosures by public employees survey, question 20 (N=57).

While utilization of external pathways for reporting is clearly a small proportion of the reports that are made, for a number of reasons it is essential that those pathways be available to staff. As already discussed, one reason is that reporters may fear retribution if they report internally. As one manager said:

I think in general people in my organisation don't want to report. They're afraid of reporting, they are afraid of victimization and I think that those fears are valid. I think there's a lot of evidence when somebody makes a complaint that they then get victimized by that. So I think for that reason, if anyone decides to make a complaint they tend to go straight to (the integrity agency). They tend to go outside because they feel that they might actually be a bit more protected than going internally.

Another reason is the belief that nothing would get done; another manager:

I think they report externally because they didn't think that internally anything would get done. I think they think that by reporting externally there's someone from the outside looking in rather than somebody from the inside looking in. So therefore they're a lot more objective about it.

Most managers interviewed accepted the reality of external reporting and saw the benefits:

Interviewer: How does the organisation view external reporting, and the whistleblower?

Manager: certainly some of our directors at that level are not frightened of external review at all. I think they see it as an opportunity for improving process. I think they get disappointed sometimes if the issue wasn't picked up before the person feels they had to go to another agency or even had come to us but certainly the general manager is very onboard. I think some of the directors and some of the managers take

it personally. It's more a personal thing. But more and more [are starting] to say, hang on a minute, we're actually improving, where making our workflow better, staff coming forward is really good.

Others were somewhat more sceptical:

So there's a process for reporting. But I think people, either because they don't understand (the process) or, quite deliberately sometimes circumvent that to try and escalate it. Staff here write to the Minister and the Director-General on a really regular basis. I've not experienced that in any other departments to that same extent. I come from a different state originally and (had) we written to the minister, we'd have probably had our little paws cut off. But here it's quite an accepted practice.

Which path – up the line, internal, or external?

Most interview respondents were of the view that staff were aware when it was appropriate to report internally and when it was appropriate to report externally. Many offered the reason that reporters go to an external agency because they are worried about reprisals:

Interviewer: Do you have an opinion about why reporters find, or go to an integrity agency rather than reporting internally?

Manager: A couple of reasons. I think, for some external reporters, as I said before, it's because they're not sure who they're meant to contact within the agency. And for others I think it might be because they're concerned about the security within the agency and wanted the integrity agency to do something about it independently.

Respondents were divided on whether or not employees should report internally or externally. Some were quite resigned to the fact that employees were likely to go to external agencies but others were quite strongly of the view that employees should have first reported the matter internally. One respondent said that he would be disappointed with staff reporting externally, but not surprised that they do.

One particular issue that was raised by managers and in the workshops was that reporting to external agencies does not mean necessarily that the recipient of the report is going to handle the investigation. Many integrity agencies adopt a policy of filtering reports received and referring some of those back to the agency where the reporter was employed.

As one manager explained the situation:

It's a very rare for (the integrity agencies) to investigate. Unless it was a very serious matter like some of the significant public interest reports. But my experience is that, generally they refer it to us. They'll monitor it and monitor the outcome and they may be a little more interested in it than possibly something that we've notified them about that's come through us. But essentially it's very rare for them to investigate.

It does need to be noted that the integrity agencies do not have unlimited resources to investigate all reports that are made to them or referred to them. Quite logically, those integrity agencies have taken the view that the best use of their resources used to focus upon the agency's performance in terms of the investigations rather than reviewing or dealing with the substantive issue.

A number of participants in the study were of the view that referring matters back to the organisation, while administratively logical, can create problems for the reporter. If the person making the report did so because of lack of trust in the organisation, it comes as an unpleasant surprise to find that the report (and possibly the reporter's identity) has been referred back to the organisation. (A representative of one integrity agency pointed out that its practice was to seek the agreement of the reporter before going back to the agency with the disclosure).

Going public: advice on contact with the media

The issue of contact with the media was dealt with in detail in Chapter 8 of the review of Australian whistleblowing legislation (Brown, 2006). Following on from that analysis, Chapter 11 of the first report recommended that, ideally, whistleblowing legislation should allow public interest disclosures to be made to journalists and members of Parliament under some circumstances; principally after the reporter had exhausted internal channels of reporting without success.

As the 2006 review of Australian whistleblowing legislation noted, only one jurisdiction, New South Wales, currently provides that reporters may disclose to journalists and receive legal protection.

The current Commonwealth Government has committed to new legislation which addresses this issue by providing disclosure to the media in appropriate circumstances. Recently the Commonwealth Parliamentary committee looking at this issue (Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009) has recommended that Commonwealth legislation allow limited access for reporters to talk to journalists. This issue is still under consideration and the Commonwealth government, at the time of this report, had not yet finally determined this issue. This research team has strongly argued that reporters in all jurisdictions should be able to express concerns to journalists, normally only after internal channels of reporting (including watchdog agencies) had been exhausted, but also possibly in other exceptional circumstances.

Noting that this is an issue that is primarily legislative and thus outside the discretion of individual agencies, organisations still have an obligation to advise their employees of their rights and obligations when it comes to reporting outside the organisation. All jurisdictions have confidentiality provisions that apply to public sector employees, as do most employment agreements with contractors. Organisations have the task of encouraging employees to report wrongdoing but to do so realistically and, within the context of their obligations, not to breach confidentiality provisions. The research project found that, by and large, most organisations provided sound advice to their employees on this issue.

Having said that, it is clear that an over-emphasis upon confidentiality provisions and labeling persons who breach these provisions in highly negative terms, can serve to discourage reporters from coming forward at all. Agencies should recognise that in line with public reporting obligations regarding disclosures, it may ultimately be counterproductive to try to insist on enforcing confidentiality rules in many circumstances where there is genuine public interest in a disclosure.

2.4. Anonymity

Checklist items:

- Clear advice that anonymous reports will be acted upon wherever possible, and as to how anonymous reports/approaches can be made
- Commitment to the confidentiality of whistleblowing reports to the maximum extent possible, with clear advice about possible limits of confidentiality.

Anonymous reports

Following on from the issues raised above, organisations should accept anonymous reports, and give a commitment that they will be acted upon. Flexibility in reporting options will facilitate the reporting of wrongdoing. Further, assurances of anonymity encourage risk-averse complainants to approach a disclosure point such as a hotline, and even though most anonymous complainants do ultimately reveal their identity once they understand the likely investigation process and opportunities for confidentiality.

Nevertheless, when agencies were asked whether they would accept anonymous reports, while 68.1 per cent said yes, 28 per cent said no (with a 3.9 per cent non-response rate; Survey of agency practices and procedures, question 19, N=304). Of those agencies that accepted anonymous reports, the estimated percentage of reports that were anonymous was 5.64 per cent.

While most agencies are therefore flexible in terms of the form a report of wrongdoing can take, a significant proportion are not. It should be noted that, in some jurisdictions, whistleblowing protection is only available to those reporters who make a formal written report and in others, organisations are required by the legislation to receive anonymous and oral reports.

Realistically, only those anonymous reports which contain enough information to support a proper investigation can support a commitment to take action. The suggested procedures below suggest how this issue may be addressed.

Advice about confidentiality

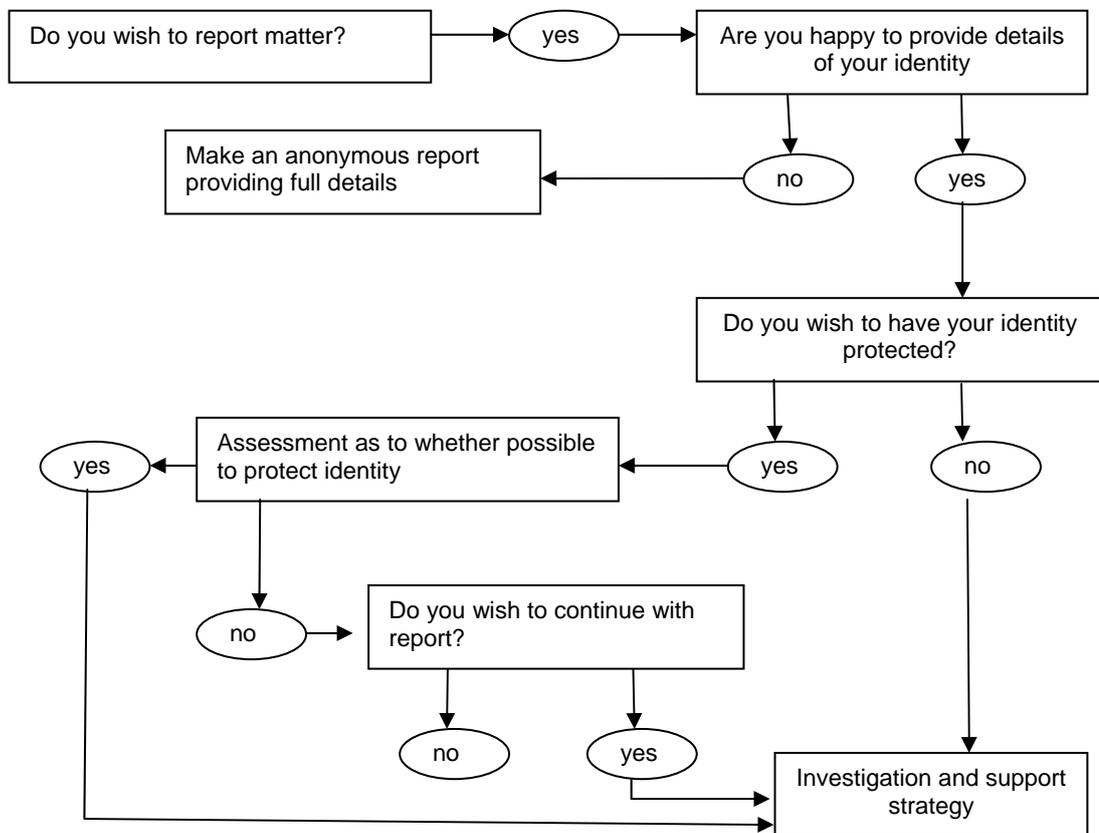
The issue of confidentiality is extremely important in the whole area of reporting wrongdoing. The next section deals comprehensively with the issue of confidentiality, looking at it in its broadest sense. As will be highlighted, confidentiality is inextricably linked to be encouraging employees to report. It is important that potential whistleblowers are given credible commitments regarding confidentiality, as well as accurate advice regarding the circumstances in which confidentiality may not be able to be maintained.

It is also important that those receiving enquiries or reports to establish what prospects there are of maintaining confidentiality, by obtaining information from the complainant, in order to provide accurate advice about what the whistleblower should do to protect themselves. In one of the workshops, a representative of an integrity agency made some practical suggestions for the questions that should be asked by the recipient of a report – whether a line manager, specialist internal units or external watchdog agency – when advising on confidentiality:

- Who knows about the report?
- Is the organisation required to notify the disclosure has been received?
- Has the person told anybody?
- Is it obvious from the nature of the disclosure who has made it?
- What is the risk to the reporter or the colleagues if the identity is disclosed?
- What is the risk to the investigation if the organisation reveals anything about the identity of the reporter at this point?

Figure 2.6 provides an outline of one agency's process for dealing with issues of anonymity and confidentiality at the outset of an anonymous approach.

Figure 2.6. Anonymous approach flowchart



Sample content for policies & procedures

Who is covered

These procedures apply if you are:

- A permanent employee, whether full-time or part-time;
- A temporary or casual employee;
- A consultant working for the organisation; or
- A contractor working for the organisation, including an employee of the contractor

What sort of activities can be reported

You can report on any incident or activity that you consider would impact adversely on the operation of the organisation. The following list is indicative rather than exhaustive:

- Corrupt conduct;
- Fraud and theft;
- Official misconduct;
- Maladministration;
- Harassment or unlawful discrimination;
- Reprisal action against a person who has reported wrongdoing;
- Serious and substantial waste of public resources;
- Practices endangering the health or safety of the staff or community;
- Practices endangering the environment.
- Any other matter that you consider to be wrongdoing

If you have a witnessed wrongdoing and are contemplating reporting it, there are some issues that you need to keep in mind:

- the fewer people who know about your report before you make it, the more likely it will be that the organisation will be able to protect you from any detrimental action in reprisal. You are encouraged not to talk about your report to your work colleagues;
- in making your report, you need to give consideration as to the best person to receive it. If it is a matter that can be resolved by one of your line managers, then you should report it to your line manager. If it is a matter where you think that senior people may be involved, you should consider reporting it to the CEO or an external body;
- The issue that you may be concerned about may involve activity that is primarily aimed at you, like harassment or bullying. These types of issues are personnel grievances. This does not mean that you should not report them as they are contrary to the policies of this organisation. These types of issues should be reported to your line manager or a more senior manager in the first instance; and
- You should not make a report if you know it to be malicious, false, misleading or vexatious. You will be asked why you have come to the view that the activity or incident warrants reporting. You do not need demonstrate a legal level of proof, but you should be prepared to demonstrate that you have reasonable grounds for your suspicions.

- If you have been involved in the wrong doing yourself, you should be aware that the fact of making your report will not protect you from disciplinary or criminal action. However, if your involvement has been of a minor nature and the matter that you report is serious, your organisation may choose not to take any action against you because you have brought forward the report.

Staff wishing to report wrong doing are encouraged to report the matter **internally**.

- (The following is a list of potential sources for the acceptance of reports of wrongdoing. These may need to be adjusted to take into account relevant legislative provisions or internal organisational policies).

Who to report to

Reports of wrongdoing in this organisation may be made **internally** to:

- your line manager;
- any other person in a management position within the organisation;
- the CEO;
- the Chair of the Audit Committee;
- specific officers designated to accept reports of wrongdoing;
- designated peer support officer (confidante); or
- specialist areas (like an internal investigation unit or internal order to unit – contact details will need to be included).

The person receiving the report will:

- ascertain what you expect to be done with the information. In particular, if you specifically wants the matter to be handled in line with formal reporting procedures, the recipient of the report will take the necessary steps to handle the matter in accordance with those formal procedures;
- make an initial assessment as to whether you need any form of protection or support as a result of making the report;
- determine the urgency of the matter;
- ascertain whether you have reported to, or informed, any other person in the organisation on that particular issue; and
- ensure that the person making the report is aware of both internal and external avenues that are available.

Reports over wrongdoing can be made in the following forms:

- orally;
- in writing (by letter, minute or e-mail; or
- by telephone to a dedicated hotline (number will need to be included).

Staff wishing to report wrongdoing **externally**

You may choose to report wrongdoing to someone external to this organisation. You can do this as a first step, or if you are not satisfied with the response to a report that you have made to someone within the organisation

(The following is a list of potential sources for the acceptance of reports of wrongdoing. These may need to be adjusted to take into account relevant legislative provisions or jurisdictional structure).

- Anti corruption body (ICAC, CMC, CCC)

- Public Service/Merit Protect Commissioner
- Auditor General
- Ombudsman
- Police
- In NSW, in limited circumstances, a Member of Parliament or journalist. In Queensland, in Queensland, Members of Parliament are an appropriate entity for reporting purposes.

You should be aware that when you report to an external body, it may discuss your case with this organisation. We will do everything possible to cooperate with that body to work towards a satisfactory outcome.

You should also be aware that if you report matters to a person or an organisation that is not mentioned in these procedures, you will not be able to rely upon the protections afforded by the (relevant Act) and may be in breach of the statutes dealing with the unauthorized release of information.

Anonymous reports

The likelihood of a successful outcome is increased greatly if, when you are reporting a suspected wrongdoing, you make your identity known. Nonetheless, you are able to report these matters anonymously either in writing or by telephone. If you do decide to report anonymously, you will need to provide sufficient evidence for the matter to be investigated, as it will not be possible for us to come back to you for clarification or more detail. Also, it will not be possible for us to keep you informed on progress in handling your report and you could experience difficulties in relying upon the protections afforded by the (relevant Act).

If you have reported anonymously and provided enough information for the organisation to act, the organisation is committed to acting upon your report.

3. Assessment and investigation of reports

Building workplace risk into disclosure assessment

The second major objective of any whistleblowing program is the effective investigation of whistleblowing reports, followed by effective action. However these responses rely on effective assessment of what the disclosure is about, so that it can be handled in the most appropriate way. These elements are crucial to any program.

Most key elements discussed in this section, arise from the key finding in the first report that the vast bulk – around 97 per cent – of public interest whistleblowing occurs internally in agencies, with the vast bulk of this occurring to supervisors and line managers, rather than to reporting hotlines or internal specialists in the first instance.

In response to these findings, the first report recommended more comprehensive agency system for recording and tracking employee reports of wrongdoing (p.304), and improved basic training for public sector managers on how to recognise and response to possible public interest disclosures (p.306). This section shows how that recommendations should be embedded in agencies' whistleblowing programs.

The research identified two further key elements that agencies need to build into the assessment stage of disclosures. The first is the lesson that by virtue of their informal receipt, an overwhelming majority of reports of wrongdoing may not end up being handled within the formal reporting processes of the organisation, due to the common ambiguity about when reports should be handled informally by line managers and where they should be made part of the formal reporting processes. It is accepted that many reports of wrongdoing will be dealt with in the day to day process of management. However, it is essential that organisations develop policies that very clearly set out where managers should handle matters themselves, whether and where they should be recorded and where they should be referred to internal or external organisation mechanisms.

The second key lesson is the importance that efforts to support and protect employees who report wrongdoing should commence at the point of disclosure, rather than when problems begin to arise. Even though it was almost unanimously agreed that risk assessment processes should be applied to whistleblowing, in practice, in most case study agencies, this was hardly ever done, with few organisations having a credible risk management processes in place. Risk management is a key component in protecting reporters from reprisals, but it also can be applied to the broader organisational issues that are faced with reports of wrongdoing.

Other components include the need to preserve and manage confidentiality, to begin planning for when confidentiality is not available, and to deal with issues of equity and natural justice that often arise at early stages of investigations. However it is the overarching focus on building risk management into the early stages of the assessment and investigation of disclosures that represents the key finding.

3.1. Identification and tracking of reports

Checklist items:

- A coordinated system for tracking all significant reports of wrongdoing (including grievances) at all levels of the organisation
- Advice to supervisors on when, how and whom to notify about staff complaints and possible whistleblowing reports
- Organisational procedure for early notification of external regulatory or integrity agencies about significant or higher-risk reports

Tracking wrongdoing reports

The following sections deal with issues surrounding the establishment and the maintenance of a good whistleblowing reporting system. As discussed, the first report noted the many indications that most agencies currently lack sufficiently comprehensive systems for recording and tracking employee reports of wrongdoing, which are a basic prerequisite to effective monitoring of how many public interest disclosures are being made, what investigation or other action is being taken, and how those involved in the disclosures are being managed, at both an agency and a whole-of-government level.

Even more importantly, such systems are basic to enabling the senior management of agencies to know what disclosures are being received at junior and middle management levels – which is where the bulk of disclosures are currently received, and where the key risks of mismanagement, mistreatment or reprisal currently arise. For these reasons, integrated systems need to be put in place which:

- Allow senior management to track reports and report-related issues wherever they are being dealt with throughout the organisation, including informally by lower level managers;
- Record and track wrongdoing reports in a coordinated way, together with other forms of complaints, grievances and conflicts;
- Record and track all reports that might possibly be classified as public interest disclosures (PIDs) under legislation, not just reports that staff have requested be treated as PIDs or which evolve into more serious cases; and
- Require all reports to be assessed at the outset for the level of reprisal risk or other conflict associated with the making of the report, classified according to risk, and routinely monitored for any change in risk level (see section 3.2).

In the workshops that considered the comparative analysis of the case study agencies, representatives endorsed the need for more comprehensive tracking of reports. These representatives, by and large, worked in the central units within organisations that attempt to coordinate whistleblowing and other reports. Features of a good reporting system were seen as including:

- having a low threshold for reporting so that early intervention to protect reporters could be taken;
-

- be a part of a broader reporting system which included grievances and the reporting of other sorts of incidents. This would enable streaming of issues so that issues like bullying can be dealt with by Human Resources;
- include *prime facie* minor incidents which could indicate patterns of more serious behaviour; and
- iron out inconsistencies between the decentralized points of authority and the central coordinating area.

Under the radar? Advice to managers on formal and informal handling

The supervisors and line managers who currently receive the bulk of reports often explicitly act as a filter and make a range of threshold decisions that determine how reports are handled. One such issue is whether or not they considered the seriousness of the report requires the issue being raised at a more senior level, or included in formal tracking.

In interviews, managers reported quite a diverse approach to the issue of formal or informal reporting. Some said they regarded each report as a formal report and it was logged even though it wasn't taken any further. Others were happy to settle it over a cup of coffee. A common phrase used was 'nip in the bud':

But there are an awful lot of other allegations and complaints against people that don't fall into that category (serious matters). You know, the sort of ongoing argy bargy, she hates me, she snarls at me over the photocopier, [the supervisor] is mean and nasty to me etc.

Many managers spoke about the exercise of discretion in making the decision whether or not to handle the issue themselves or whether to refer it. Some gave indications of what they consider to be a matter that they could handle themselves (like taking a long lunch) or needing to be referred (like allegations of corruption).

One factor frequently mentioned was whether or not the report was part of a pattern. Of course, if the report is being handled informally and no record kept, identifying a pattern can only happen at the personal management level.

Clearly some organisations have adopted complaints handling processes that put the emphasis upon managers dealing with issues themselves. This issue relates closely to the subjective judgment that any person receiving a disclosure must make as to whether the matter being communicated is as a grievance or a public interest matter, as discussed below.

One interviewee estimated that, in their opinion, 70 per cent of reports in their organisation were dealt with informally, but that there were sometimes reasons for formalisation:

So, for me, I find the easiest way to protect myself is to request that the complaint be made formal, so that I can't actually access those procedures and policies that we have in place. Then that's organisation-wide, so it's supported by the organisation and I certainly can't be criticized for doing the job.

In the view of the project team, the lack of clarity evident about what should be handled formally as a report of wrongdoing and what should be handled informally as a management issue is one of the most pressing problems needing to be addressed by organisations if they are to handle whistleblowing cases effectively.

It is understandable that line managers would feel that it is part of their responsibility to address issues that are raised with them as quickly and effectively as possible. However, this opens up a whole raft of problems:

- If the issue being complained about arises directly from action taken by the recipient of the report, there is a likelihood that the recipient will want to cover up the issue by dealing with it informally;
- The human tendency to make expedient decisions which would make the recipient of the report look good in the eyes of supervisors;
- Missing patterns of behavior that could indicate endemic problems within the organisation. Whether or not these are matters of serious public interest or personnel matters, the organisation still needs to know about them so as to take effective and coordinated action; and
- Staff talk to each other. They will know how particular managers have dealt with issues raised. If every manager is taking an individual approach to handling an issue then there will be a lack of consistency in action. This lack of consistency may breed cynicism and scepticism among employees in the organisation.

The response to this issue needs more than the promulgation of sophisticated and comprehensive procedures for the reporting and handling of wrongdoing. All potential recipients of reports of wrongdoing need to be clear in their own minds what sorts of issues they can deal with themselves and what sorts of issues need to be formally notified or referred to others in the organisation. Where that line is drawn may not directly correspond with the distinction between employment related grievances and public interest wrongdoing, discussed below. Many disclosure-related grievances are of such seriousness that the response needs to be coordinated from a higher level than first level managers.

Achieving a state where line managers are quite clear about the reporting obligations is not merely an issue of the transmission of skills; it is an issue about organisational culture. It is the organisation clarifying the independence and autonomy of the line managers for specific parts of issues and clarifying where the organisation must take coordinated action to deal with the wrongdoing reported.

Early notification to external agencies

Agency systems for recording and tracking disclosures need to extend to automatic systems for early notification of external regulatory or integrity agencies about significant or higher-risk reports. As a disclosure is logged and assessed, there should be routine notification of external agencies of matters triggering mandatory reporting requirements, other serious matters, any high risk matters, and all alleged reprisals or cases of detrimental action.

This procedure recognises that there are many circumstances where an agency is better placed in knowing that another appropriate agency – be it the police, an anti-corruption body or the lead agency in their jurisdiction for public interest disclosures – is aware of the matter and able to intervene to provide advice or assistance with its resolution, if required. As already noted, the first report (p.310) recommended that governments ensure at least one coordinating integrity agency has the statutory authority and capacity to track whistleblowing cases, and maintain an effective supportive monitoring and oversight role, including the ability to respond to early requests for assistance where need arises.

3.2. Assessment procedures

Checklist items:

- Skills and procedures for differentiating between different types of wrongdoing (including grievances), and initiating appropriate investigations
- Flexibility in the type, level and formality of investigation to be conducted, including clear criteria for when no further investigation is required
- Early and continuing assessment of the risks of reprisal, workplace conflict or other adverse outcomes involving whistleblowers or other witnesses

Differentiating between different types of wrongdoing

The last section discussed the range of wrongdoing that should be included in a whistleblowing program. The range should be as broad as possible in keeping with the principle of if 'in doubt report'. One implication is that recipients of reports will receive reports on a wide variety of issues and have implications for how the organisation acts.

The range of issues extend from employment-related grievances through to public interest disclosures. Necessarily, the assessment process – including the capacities of line managers to assess and refer reports – frequently have to deal with mixed subject matters and a mixture of motives on the part of whistleblowers.

Table 3.1. Comparison of internal witness circumstances coexistent with making a report with managers' and casehandlers attribution

Issue	Issues cited by whistleblowers (%) (N = 214)	Ranking of whistleblowers' issues	Manager s' Mean (N = 860)	Ranking of Managers' issues
Conflict or serious disagreement with the employee's manager(s) or supervisor(s)	37.1	1	3.22	1
Dissatisfaction with one or more agency policies	12.6	2	2.88	7
Dissatisfaction with the employee's work duties	11.7	3	2.97	4
Another grievance against the employee's manager(s) or supervisor(s)	11.6	4	3.01	3
A decision about a promotion that affected the employee	11.2	5	2.73	6
Conflict or serious disagreement with the employee's coworker(s)	10.7	6	3.22	1
Another grievance against the employee's coworkers	4.9	7	2.95	5
Failure to renew the employee's contract	0.5	8	2.04	8

Note: Internal witnesses (N = 224) were asked: 'When you first reported or provided information about the wrongdoing, would any of the following already causing you concern?' Respondents were able to circle more than one option. Managers and case handlers (N = 860) were asked: 'When employees first report wrongdoing, how often do you think any of the following issues are already also causing them concern? (1 = never, 2 = rarely, 3 = sometimes, 4 = often, 5 = always, 6 = don't know). The list of issues was identical.

Table 3.1 sets out the self-assessment of case study agency whistleblowers and the estimates of casehandlers and managers about the prevalence of such mixed reports. Reporters were asked to nominate whether a series of circumstances related to pre-existing management or personnel difficulties coexisted with their decision to report. Managers and case handlers were asked whether they thought those same sets of issues were related to the report. In other words, reporters were asked a factual question and managers/case handlers were asked to attribute motivation to the reporters.

As mentioned above, managers tend to take a different view about their organisation in general, and whistleblowing in particular, than non-managers. This distinction becomes crucial when we are looking at the attribution of self interest when it comes to reporters. In summary:

- Both groups agreed that conflict or serious disagreement with supervisors was the most common. It was clearly the most common issue cited by reporters (37.1 per cent of responses) and while it had the highest mean from managers and case handlers, that was ranked equally highest with another issue. This would indicate that while managers and case handlers saw the issue as being important, its importance was *underestimated*;
- Managers and case handlers also *underestimated* the importance of dissatisfaction with agency policies; and
- Managers and case handlers *overestimated* the importance of conflict or serious disagreement with co-workers.
- Managers and case handlers appeared to have correctly determined the importance of:-
 - decisions about promotion
 - dissatisfaction with work duties
 - grievances about managers
 - grievances about co-workers.

In practice, the responses to interviews showed that many managers are aware of the reality that disclosures often involve a variety of issues, with the potential these have to complicate the type of organisational response that is initiated:

I think people who have personal grievances are very good at making them look like a public-interest issue. I think it is less common for them to actually be a public issue; it's not unknown, but it is less common for them to actually be a public-interest issue.

And:

Interviewer: How common do you think it is for a complaint to involve both a personal grievance and a matter of public interest?

Manager: I don't know. I think that it would probably be 20 to 30 per cent - something around that level. I don't think it is the majority of issues. I think its on the low end of the number of issues but certainly there is a number of issues that we deal with that are internal human resources grievances and things, that if it came to light in the general public there would be some concerned by the public about the activities that somebody was doing or somebody was undertaking. I think the level of maladministration of fraud is quite minor.

A closely related to the issue of whether a matter is an employment related grievance or a public interest wrongdoing is how the organisation then deals with the matters. An example of managers consequently looking at the issue of motive rather than content is demonstrated in the following quote from an interview:

‘Where it's more weighted to the wrongdoing [than it] is to the personal grievance, I guess I'd use more of a didactical approach where I'd actually look at the facts of 'okay, why is the wrongdoing so important to you?' Particularly if it's been happening for some time, what has changed in your life or your organisation that you now feel it's necessary to bring this wrongdoing up and then go backwards from there with it.

Interviewer: OK so you'd look at the motive as well as the facts?

Yep’.

The organisation’s internal procedures must be capable of initiating the appropriate type of investigation as related the report received. Most organisations will already have established processes for dealing with workplace grievances, and it should be a simple matter to stream these into that process. With public interest disclosures, they will need to be investigated, either by internal or external resources. Organisational procedures should provide guidance to the recipients of reports as to how these matters should be streamed.

These issues also reinforce the need for improved manager training, recognised at the outset. When asked about what training officers authorized to receive reports were provided with, agencies reported that 43.1 per cent had no training, 49.8 per cent informal training and 22.9 per cent professional training (Survey of agency practices and procedures, question 15, N=297). Given that 97 per cent of initial reports were made internally, and most of these to line managers, it is clear there is considerable variation in the level of preparation and training being given to recipients of the initial reports.

Appropriate investigation for the case

An investigation is:

- an activity that takes place where there is some allegation of wrongdoing or there is some failure in the operations of the organisation; which
- involves the assembling of factual information supposed to ascertain the truth of the matter in (potentially) very complex circumstances;
- either for the purpose of applying some form of sanction, to ascertain what sanctions should be applied, to remedy any failure identified, and/or to improve systems and procedures.

When a report of wrongdoing is received, the first decision that has to be made is the level of investigation that has to be undertaken. In terms of seriousness, investigation can be undertaken by:

- a line manager using some form of guidance on how to assemble and record the relevant information;
 - an internal organisation unit where there are personnel who have qualifications and experience in investigations;
-

- contracting in resources skilled in investigation; or
- negotiating with an external watchdog organisation to undertake either all or part of the investigation.

Where organisations do not have any in-house investigation resources they will need to provide managers with some practical guidance on undertaking an investigation. Rather than attempting to provide guidance in the suggested procedures, it is recommended that organisations in that situation provide guidance to the officer tasked with the investigation. The Crime and Misconduct Commission has published such guidance in its *Facing the facts (guidelines)*, and as well the Independent Commission Against Corruption guide *Internal investigation* handbook (ICAC 1997) contains such guidance. Both documents are available from those agencies' websites.

The key determinant in the level of skill applied will be the seriousness and the nature of the allegation of wrongdoing. If the report is about employment procedures, the investigation can be conducted in a less formal way. If there is the potential for some criminal sanctions to be applied and the investigation needs to be conducted professionally with a view to handing the issue over to the police for possible prosecution.

Assessing risks of reprisal, conflict & detrimental outcomes

The first report (p.133) demonstrated the high risks of detrimental outcomes that surround public interest whistleblowing. A significant proportion (some 22 per cent) of employees who reported public interest wrongdoing perceived themselves as having been mistreated as a result, with about 43 per cent overall suffering extreme stress, and about 62 per cent overall suffering at least some increased stress.

It should be of concern to all managers to attempt to reduce the risk of whistleblowing leading to these adverse consequences. The likelihood is high and the consequences for individuals can be very severe. Therefore, because public sector organisations are under an active obligation to protect all their employees by virtue of their occupational health and safety obligations, the importance of undertaking some formal risk management process at the point where an employee comes forward with a report is absolutely paramount.

In the last section, issues about the informal receipt and handling of reports were prominent. While it may be efficient and administratively convenient for line managers to handle reports informally and to deal with the wrongdoing immediately, the project team is aware that very few organisations apply risk management principles to dealing with the very clear risk of reprisals against reporters.

In the Survey of agency practices and procedures, agencies were asked:

- Whether they carried out assessments of the risk of reprisals against staff who had reported wrongdoing (q39). 69.7 per cent said no, 2 per cent said that they had formal procedures and 28.2 per cent said that they had informal procedures (N=294);
 - at what stage in the reporting process they undertook the reprisal risk assessment (q40). 18.8 per cent of the agencies said this was undertaken when the original report of wrongdoing was first made, 9.2 per cent said that they did this when the
-

internal weakness first expressed fears or concerns about possible reprisals, 3.6 per cent when actual detriment is reported and 4.9 per cent nominated a risk assessment process at some stage in the process. 63.5.4 per cent of the agencies did not respond to this question. (N=304); and

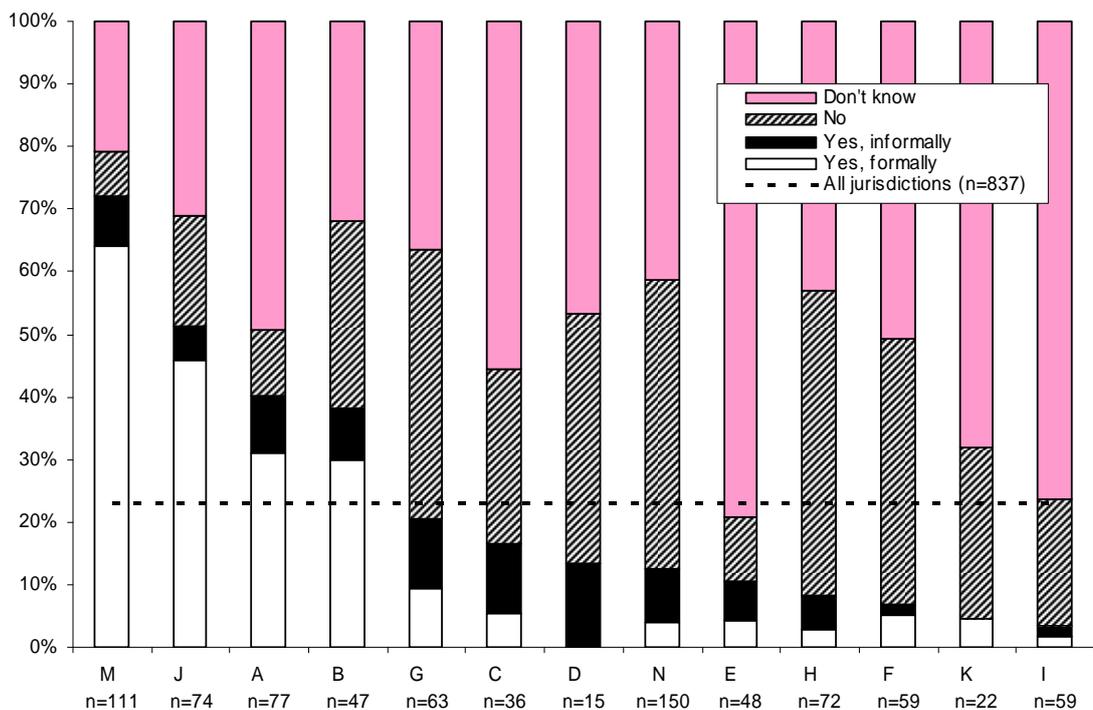
- whether anyone in the agency had a specific responsibility for undertaking or coordinating the risk assessment of reprisal (q41), 15.1 per cent said yes, 13.5 per cent said no and 71.4 per cent gave no response (N=304).

Where agencies said that they had formal procedures, they were asked to send the procedures for evaluation. As described earlier 175 sets of procedures were submitted and assessed. One criterion against which the procedures were evaluated was the comprehensiveness of the formal procedures for assessing the risk of reprisals against reporters. This item was the one least likely to be present in agency whistleblowing procedures. In fact, only five agencies out of the 175 that submitted procedures mentioned risk management of reporters at all.

These figures show a disturbing lack of interest in agencies in having procedures to assess risk and implementation structures in place to ensure that the risk assessments actually take place. The study found that this was one of the major shortcomings in the procedures and practices for dealing with employees who report wrongdoing.

The Casehandler and Manager Survey also asked respondents whether reprisal risk assessments are conducted in their organisation (Q48). The results are shown in Figure 3.2, where case study agencies are ordered according to the proportion of staff who believed that risk assessments were conducted, either formally or informally. The results point clearly to the four agencies where any organised risk assessment approach did occur.

Figure 3.2. Casehandler and manager perceptions on whether reprisal risk assessments are conducted in their organisation (proportion)



In the workshop of representatives from case study of agencies, the notion of applying risk management techniques to the management of the whistleblowing process was unanimously supported. Most public-sector agencies in Australia apply risk management techniques for a number of functions, for example, occupational health and safety. Participants in the workshop identified that risk management techniques would be useful in prioritizing competing sets of urgent cases and would provide organisations with some guidance as to the resources that needed to be applied to the support of a particular whistle blower.

At this stage it should be noted that while the focus on risk management is primarily to determine the risk of reprisal against a reporter, the risk management process can, and should, be utilized to assess and treat all the risks related to the reporting of wrongdoing. Without attempting to be exhaustive, risks beyond reprisal could include:

- Risk of damage to the reputation to a third party if a specific accusation of wrongdoing has been made against another member of the organisation;
- Risk of paralyzing the reporter's work unit if the issue is not managed optimally;
- Risk that the reporter may breach confidentiality requirements and speak to the media before the organisation has had the opportunity to deal with the issue; and
- Risk of adverse health effects to the reporter or any other person affected by the making of the report.

A model that appeared to gain a lot of support among the workshop participants, particularly those from larger agencies, was having line managers undertake a quick assessment of the risk of reprisal and forwarding that to the whistleblowing central unit. That unit could then undertake a more detailed risk management process where that was called for, drawing upon their agency-wide experience in handling disclosures. Clearly this requires a significant engagement with line managers. One of the large agencies indicated that it was standard procedure for the central unit to have a look at the details of the case and use its experience to determine whether there was likely to be a major risk and, if that was the case, contact the line manager and request that a detailed risk assessment be undertaken.

Participants in the workshop noted that performing a risk assessment of the possibility of reprisals could be a quite difficult task. In many cases the person making the disclosure had exhibited individual factors, both career and personal, that could play a role in the way the process plays out. One suggestion that was made was for the person in managing the support role to draw quite clear parameters between organisational issues and personal issues.

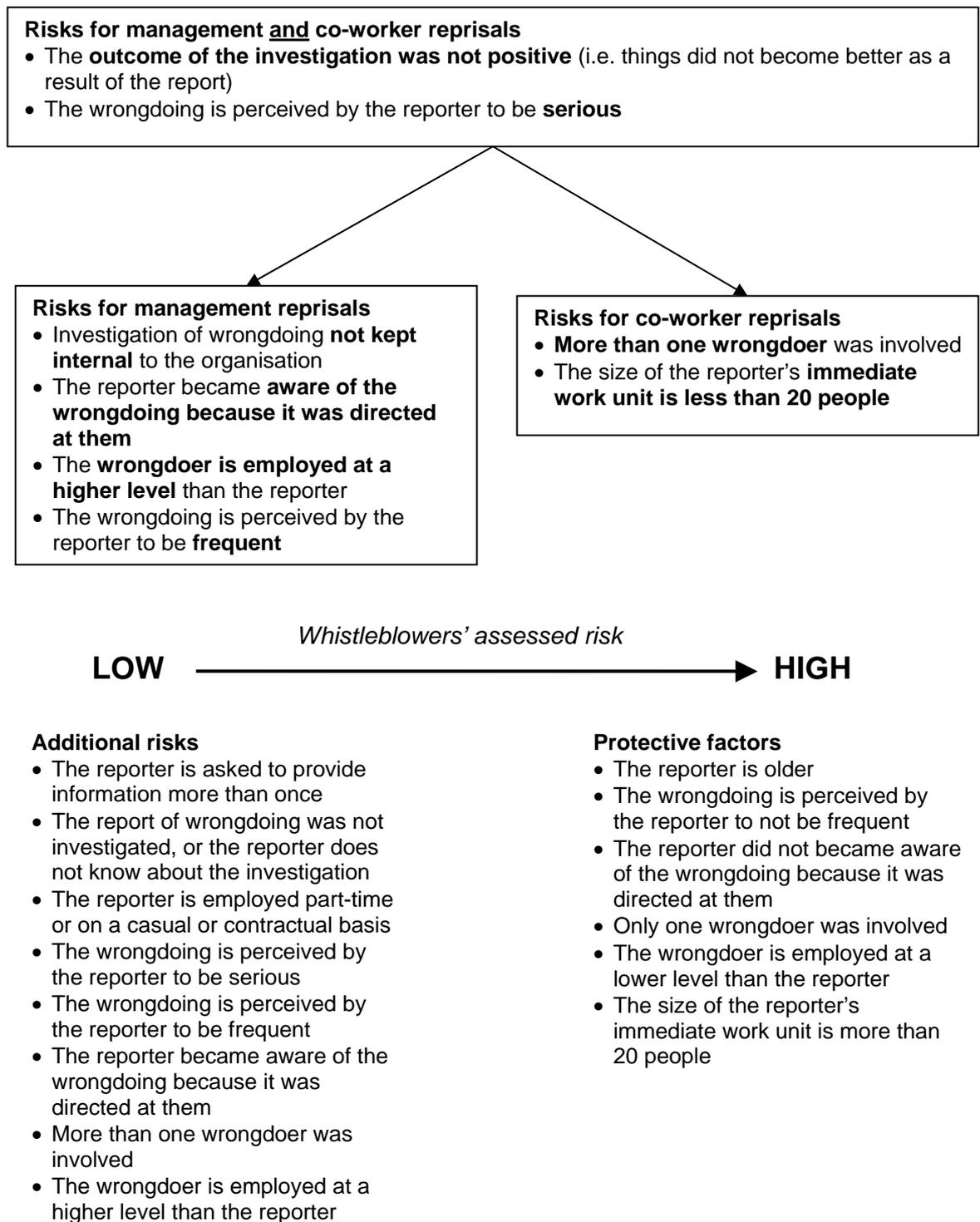
One theme that has been recurring in this project use that the problems faced by employees reporting wrongdoing were very closely aligned with issues of workplace induced stress. All public-sector agencies have a formal obligation to protect the health and well-being of their employees and where an employee faces difficulties arising from the reporting of wrongdoing, clearly the agency has an obligation to take steps to protect that the employee. Risk management is a very practical and obvious mechanism for fulfilling that obligation.

Chapter 6 of the first report (Brown & Olsen, 2008) contains a detailed statistical analysis of the factors that are present when whistleblowing cases result in adverse consequences for the reporter. These factors are a valuable pointer when thinking about risks to reporters. However, it needs to be noted that those statistical analyses only indicate that these factors correlate with less than optimal outcomes. These correlations should not automatically be interpreted as direct causation. If organisations are to fully utilize risk management

techniques to assist reporters, over time they will build up a bank of agency experience which will enable them to more accurately predict the risks of reprisals. In other words, those factors mentioned are a starting point for thinking about risk rather than definitive.

Figure 3.3 gives some indications as to the risk factors which would lead to the view that the reporter is at risk of bad treatment (i.e. reprisals), drawing on chapter 6 of the first report. Note that the risks for reprisals by management and co-workers differ.

Figure 3.3. Risk factors for management and co-worker reprisals



Turning to the practicalities of using risk management techniques there are a number of threshold issues that agencies need to consider.

Who should undertake the risk assessment?

There are significant advantages in undertaking the assessment at the organisational unit level where the employee is located. The advantages of this are:

- it can be done quickly without having to go through the processes of being referred to a central unit. If there is some risk of reprisal, then this can be recognized and acted upon early;
- much of the information that will be used to undertake the risk assessment will emanate from the line management or the employee. It would be counterproductive to refer matters to a central unit that then has to go back to the line management to find out significant information relevant to the assessment. This would take more time and make the process unnecessarily complex; and
- by going through the process of assessment at the line management level, it would remind line managers of their responsibilities as well as provide some degree of assurance to employees under threat that the interests are being taken seriously.

There are, however, some disadvantages in undertaking the risk assessment at the line management level. These may be:

- given that the research findings indicate that the most likely source of reprisals is management itself, it may be a leap of faith in assuming that line managers are always going to deal with the risk assessment in a fair and reasonable manner;
- risk assessment processes, by their very nature, require some degree of skill and formality. In any substantial organisation, it is going to be a major challenge to ensure that every line manager is aware of the responsibilities to undertake a risk assessment, has the basic skills to undertake it and has access to the relevant material. In other words, there are significant issues of consistency in having such a decentralized approach. As will be discussed below, one way of dealing with this is to have a preliminary stage of quickly going through a checklist of factors that point to risk (these are often referred to as ‘red flags’) and then undertaking a more rigorous approach centrally; and
- there is a close nexus between good performance management and the effective handling of employees who come forward with reports. If there is any shortcoming in performance management, it is likely to be at the line management level that is being they are required to undertake the risk assessment. The implications of this are far-reaching. If the report has been triggered by shortcomings in the performance management process, then the direct line manager is clearly not a neutral source of risk assessment advice.

Whether the risk process is conducted centrally, at unit level, or some combination of both, it is essential that the reporter be involved in the risk assessment process.

Usefulness of risk checklist

In undertaking an initial risk assessment, the usual approach, and the one suggested here, is to set down a list of factors that can be quickly scanned and serve to alert line managers to the key problems.

- A specific threat against the internal witness has been received
- The issue reported is serious*
- There is more than one wrongdoer involved in the matter*
- The wrongdoing was directed at the internal witness*
- The internal witness has made a report about a more senior officer *
- The wrongdoing that has been the subject of the report is occurring frequently*
- The size of the internal witness's immediate work unit is small*
- The internal witness is employed part-time or on a casual basis*
- History of conflict with management and supervisors
- The reporter having already disclosed his or her identity or the identity becoming known when the substance of the report is made known;
- History of reprisals in the work unit

(Those items asterisked are derived from Chapter 6, first report).

Agencies that have kept records of whistleblowing processes may be able to add to this checklist with items specific to that particular organisation.

Risk checklist as a filter or preliminary assessment

Another issue in the use of a preliminary checklist of factors is to determine whether or not that initial risk assessment is going to be used as a filter, or as the first stage in a more comprehensive risk analysis to be undertaken by a central whistleblower handling unit.

Given that risk management is quite a complex process, some organisations have adopted the practice of undertaking filtering risk assessments and only where that process indicates a significant risk then is the full risk management process undertaken. The arguments in favour of this approach are compelling; it appears pointless for a central whistleblower unit to be routinely replicating the work done by the relevant line manager. However, there would need to be a great deal of assurance that line managers are capable and inclined to do fair and comprehensive risk assessment before adopting a filtering approach.

The alternative of using the line manager to do a preliminary risk assessment which is then reviewed, is safer but more resource intensive. The central whistleblowing unit in a large organisation will build up a degree of expertise that will enable that unit to quickly determine whether or not the initial risk assessment is valid. A good recording system for dealing with reports will be an essential tool in being unable to determine this.

As is always the case in the risk management arena, there are advantages and disadvantages in it using a checklist approach. The obvious advantage is that the user can quickly be directed to the crucial factors. The disadvantage is that the factors that are mentioned are inevitably generic and could omit some key issues that are particular to the case in hand.

Another factor that needs to be considered is that, implicit in this approach, is that the organisation is relying upon an informed subjective judgment by the line manager. A more comprehensive risk assessment approach using scales to determine consequence of the likelihood and the analysis of past records would be more reliable in delivering a credible result.

Applying the risk management standard

As mentioned above, virtually all public sector agencies have adopted risk management practices as part of their everyday operation. The key documents in this process are:

- Standards Australia (2004). *AS/NZS4360:2004 Risk management standard*; and
- Standards Australia (2004). *HB 436:2004 Risk management guidelines: Companion to AS/NZS4360:2004 Risk management standard*.

It should be noted that the risk management process, whether it is a preliminary checklist or a full risk management exercise, is not a template that can be readily applied to all organisational settings. Risks within organisations can vary because of the nature of the organisation. Also, different agencies are going to have different attitudes as to what is an acceptable level of risk and what is not an acceptable level of risk. The end process of a risk management exercise is in the treatment of the risk. Again, this is something that only individual organisations can determine for themselves.

Finally, the issues mentioned above can be determined collectively within an agency and then once set down, can provide a framework within which individual risk assessments can be made. This means that once these broader issues have been settled, the risk assessment process of determining consequence and likelihood can be undertaken quite quickly.

The risk checklist described above is not a risk assessment in accordance with the principles of the Australian Risk Management Standard 4360: 2004.

The practice and implementation of risk management is almost universal in the Australian public sector. Consequently, it is reasonable to assume that the technical capacity to apply the risk management process does not need reiterating and only one part of the risk management process that are directly relevant to reporter reprisals need to be dealt with.

Determining appropriate risk criteria

A key element that would differentiate whistleblowing from the application to other topics is the selection of In appropriate risk criteria. (There is often some confusion about the notion of risk criteria. Put very simply, it is the dimension of consequence that can be scaled so as to enable some form of measurement of the risk. In many circumstances, risk criteria are quite obvious, for example, when analyzing fraud risks the usual criteria are financial loss and damage to reputation. In a whistleblowing context there should be four risk criteria:

- Harm to the reporter
- Performance/efficiency of the organisation
- Resources
- Reputation of the organisation

In looking at a list of risk criteria like this, it is obvious they are interrelated and overlapping. However, using multiple risk criteria has the overwhelming advantage of teasing out all the

implications of a particular situation. If that particular situation impacts upon all of those criteria listed above, then it is a good indication that action needs to be taken.

Setting acceptable levels of risk

The whole purpose of undertaking a risk assessment is to make a decision as to what needs to be done. Logic dictates that there will be a level of risk set above which action is taken and below which no action is taken. While this is an issue for each organisation to determine, acceptable risk levels against the criteria could be:

- Harm to the reporter. Both good management practice and obligations to have a safe workplace would lead to the conclusion that there would be a low threshold of acceptable risk when it comes to harm to people within the organisation.
- Performance/efficiency of the organisation. With this criterion, organisations do have some more room to manoeuvre.
- Resources. Similar to the above, most public sector organisations would have some discretion in this regard. Although, a very large public sector organisation would have much greater resources at its disposal to deal with one particular case than a much smaller organisation like a local government authority.
- Reputation of the organisation. Very few organisations welcome adverse media attention and it is generally accepted that the threshold here would be reasonably low.

Ideally, in setting acceptable risk levels, the description of the level should be in such precise terms that anyone in the organisation is clear as to what is the actual level of acceptable risk

Once this step has been concluded, the remaining steps of the Standard should be applied.

One of the major findings of this research project has been that organisations have tended to place a low emphasis upon the issue of dealing with reprisals and other adverse outcomes. While there are a number of practical solutions to addressing this problem, outlined in sections below, they all begin with early and ongoing identification of risk, and prevention or containment strategies aligned accordingly.

3.3. Confidentiality

Checklist items:

- Procedures for maintaining the confidentiality of whistleblowers and other witnesses to the maximum extent possible
 - Procedures for consulting and, where possible, gaining consent of whistleblowers prior to action that could identify them, including to external agencies
 - Strategies for supporting employees and managing the workplace when confidentiality is not possible or cannot be maintained
-

The importance of confidentiality

There is general agreement that confidentiality is a very important element in the handling of disclosures of wrongdoing. In the survey of managers and case handlers, respondents were asked ‘how effective is maintaining confidentiality for managing and ensuring the welfare of staff who report wrongdoing?’ For maintaining confidentiality, 65.8 per cent said it was very effective, 19.3 per cent said it was fairly effective, 7.3 per cent fairly ineffective and 4.3 per cent very ineffective (N= 646). Many of the respondents to this survey added comments indicating how important they considered the maintenance of confidentiality.

A key issue that arose with the interviews with managers and case handlers was the link between providing support for reporters and confidentiality.

Table 3.4. Importance of Confidentiality

Issue	Case-handlers			Managers		
	Mean	SD	N	Mean	SD	N
Importance of protecting the identity of reporters (1=not at all 5= extremely)	4.39	.73568	337	4.34	.73450	531

Managing the internal reporting of wrongdoing survey q56

As Table 3.4 indicates, both managers and case handlers indicated that they considered confidentiality to be a very important component of support and protection of internal witnesses. In the interviews, a number of managers and case-handlers described how their organisations had not kept the necessary confidentiality required for an effective whistleblower investigation. One investigator related:

The way [a senior manager] handed out the letters [calling the reporters for interview] was that she sat in the (manager’s) office, with the (manager) and the four letters. Because at that time, there were four (employees) that I had to interview, and each (employee’s) name was called over the PA, and the (employee) came in and got handed the letter in front of the (manager)

That investigator went on to say that even though the transcripts of interviews had names removed, this was ineffectual in protecting confidentiality because senior management in the organisation already knew who the reporters were. A number of other interviewees indicated that there were breaches of confidentiality which were both outside the spirit and the letter of the legislation.

Another way in which confidentiality can be breached is where reporters had revealed their own identities. This was mentioned by managers and case-handlers on a number of occasions. A further way in which confidentiality can be compromised is where an employee makes a less serious report and is not concerned about revealing identity and then, upon the further exploration of the issue, it is found to be a more serious issue needing a formal investigation. In these situations, confidentiality had been lost.

Yet another circumstance where confidentiality is impossible is where the wrongdoing reported is about mistreatment of the reporter. When the substance of the report is of such a nature, it is often simply no longer practicable to rely on confidentiality.

It is common that employees in organisations, when they become aware that a report of wrongdoing has been made, will attempt to guess the identity of the reporter. Often they will be able to work out who made the report. On occasion, the wrong person is identified and line managers are faced with the difficult task of attempting to defuse the situation while still maintaining the confidentiality of the real reporter.

A number of interviewees said that, sometimes, strict adherence to the principles of confidentiality can impede the progress of an investigation. This can occur when a report is made to integrity agency and then that integrity agency refers the matter back to the organisation, without revealing the identity of the reporter. In these cases, investigators have difficulty in successfully investigating the case because they cannot interview the reporter.

Consulting on confidentiality decisions

In circumstances where confidentiality cannot be maintained or it is desirable for the whistleblower's identity to be revealed to any person, it is vital that the whistleblower be consulted and, if possible, their informed consent obtained to decision regarding the desirable action. In some circumstances the optimal way of dealing with the issues raised by the report may be to explain to all the staff concerned what has happened and what has been done, and publicly commending the whistleblower for bringing the matter forward. However, such a strategy should only be undertaken with the fully informed consent of the whistleblower, only in appropriate circumstances and if they have appropriate support.

When confidentiality ceases or is impossible

Although confidentiality is clearly important, it did not emerge as a factor bearing on risk of whistleblower mistreatment, in Chapter 6 of the first report (Brown & Olsen, 2008). This is probably because, while it is important for as long as it can be preserved, in many cases it is not an option within the organisation, or ceases to be available.

Many managers were pessimistic about the possibility of protecting reporters' confidentiality:

The thing I'm always most uncomfortable about when people come in the door and want to give me information, is what I can actually do to help them and protect them. I always have a fear, that their lives may well be changed because of their identity being revealed.

My personal feeling is I don't think that the legislation can protect the person. My experience tells me that generally, if its serious corruption, that person is going to be identified, their life is going to be changed. That's why they need to know what the implications are when they are going in (to the reporting process). I don't think you can protect them to the level they want to be protected - for example, maintain their job - if the investigation is to go forward, and I guess that's the problem. At some point in most investigations, the reporter's going to be investigated.

Other managers were realistic about the issues and difficulties surrounding confidentiality, as one said:

There are certain difficulties (with confidentiality). One of the things I do tell people straight up is that we will protect their confidentiality as much as we can, but as you know, it may come to a point where we can't progress the complaint unless maybe they will be identified. We spend a lot of time with people to make sure they're comfortable to go on with the investigation. Often I think it's the case that people tend to leave (the organisation) and (then) make a complaint.

This highlights the dilemma when considering the issue of confidentiality in relation to reporters. Clearly, potential reporters fear reprisals and one of the ways in which confidence can be maintained is for the reporter to have assurances (and expectations) about confidentiality. However, by the time someone is approaching their organisation contemplating making a report, it is likely they will have already considered the issue.

The recipient of the report in the organisation is faced with a complex ethical dilemma. Clearly they are under an obligation to honestly advise the staff member about the possibility that confidentiality will not be maintained. This could dissuade the reporter from going ahead with the report and thus the organisation would lose the opportunity to investigate and correct a potentially serious problem. So the advice given to the reporter needs to be realistic but not couched in terms that would stop the report proceeding.

This is not just a matter of having systems for the routine explanation to the potential reporter what are going to be the likely outcomes but rather creating an environment and a culture where by all potential reporters have some degree of confidence that they will be treated well by managers and by co-workers.

One of the representatives of the integrity agency participating in the workshops identified two key issues:

- Decisions whether confidentiality is demanded or offered impacts upon every aspect of how the matter is investigated and handled; and
- Realistically, confidentiality may be impossible to guarantee for all the reasons explained above.

There may be a chronological dimension to the maintaining confidentiality. Confidentiality can be easier to safeguard at the beginning of the reporting process. As more people within the organisation, or even externally, who come to know about the report, then the issues about confidentiality become more complex.

In practical terms, the benefits of confidentiality can be used in the short term but over time, those benefits will gradually erode. This is the reality of dealing with whistleblower reports but it may not be any comfort to the reporter. When an organisation receives a report, there is a relatively short time within which any investigation can be launched unimpeded by issues about compromised confidentiality. Organisations are urged to use that window of opportunity to commence the process of assessing the validity of the disclosure, and identifying other strategies for supporting the reporter, while confidentiality still acts as a temporary shield. Without detracting from the requirements of legislation, organisations need to be realistic about the capacity to safeguard confidentiality and a proactive approach should be taken to managing the (usually inevitable) disclosure of identity.

3.4. Equity and natural justice

Checklist items:

- Clear procedures for the protection of the rights of persons against whom allegations have been made
- Appropriate sanctions against false or vexatious allegations
- Clear advice to supervisors about to whom, when and by whom information about allegations need be given, for reasons such as natural justice

Protecting the rights of persons subject to allegations

In formal policies and their implementation, staff at all levels within the organisation are treated equitably. This would mean that all members of the organisation who make disclosures, or have disclosures made about them, are dealt with fairly and consistently.

Table 3.5. Protecting the identity of the subject of allegations

Issue	Case-handlers			Managers		
	Mean	SD	N	Mean	SD	N
Importance of protecting the identity of subject of allegations (1=not at all 5= extremely)	4.39	.70745	338	4.38	.68496	534

Managing the internal reporting of wrongdoing survey q57

Table 3.5 above indicates that both managers and case handlers saw the need to protect the subject of allegations. In the interviews, managers and case handlers were asked whether persons against whom allegations have been made receive the same level of support. This particular question prompted some quite passionate answers. It is clear that many managers feel that the processes of support and protection for reporters are weighted unfairly against the persons against whom the allegations have been made. One manager made the comment that the subject of allegations was not well protected, and:

.... complainants use the protected disclosure legislation really badly and use it for their own interests and make vexatious complaints against their colleagues and their managers, etc. And because everyone is so damned terrified to actually deal with those sorts of vexatious matters, for the fear of being seen to be doing detrimental action, people get away with absolute murder in terms of the level of complaints they make about their colleagues.

The comment above is not typical of the response of managers and case handlers to this question. The overwhelming majority of respondents expressed support for a balanced and evenhanded treatment of both sides of this adversarial situation. However, it does highlight that where reports of wrongdoing involving individual managers are made, those managers' colleagues can be placed in a difficult situation.

Section 1 discussed the attitudes of managers when a report of wrongdoing is an allegation against another staff member. These sorts of reports are not infrequent and create significant difficulties for organisations. As mentioned in that section, this is a cultural issue where managers need be fully aware that the rights and interests of all parties need to be protected. The sample procedures below contain suggestions as to how this may be achieved.

Appropriate sanctions against false or vexatious allegations

When reports of wrongdoing are made, they frequently make specific allegations against a particular individual. This has the effect of creating an adversarial situation and, unless it is handled in an transparently even handed way, enables those within the organisation who are sceptical about the value of whistleblowing to claim that it has the corrosive effect of encouraging unfounded allegations that can damage professional reputations.

This is one of the most emotion charged areas around whistleblowing. The following quote give some sense of the concern that these cause within the organisations. One manager when asked about the impact upon the person against term the allegation was made, said:

Just totally devastated by the fact that someone makes an accusation and their integrity has been question even though the person has come back with the evidence and said that it is not correct. There is no right of reply. The (name of the investigation entity) enquiry can destroy a person's self belief, their belief in their own worth, their value to the organisation.

In reality, the bulk of the research suggests that the problem of false or vexatious disclosures is relatively small. Most managers interviewed, had a balanced view of disclosures:

I think we do our best to support bona fide reporters and that's why I've always argued with senior management that we can't go after people who've been vexatious. Because, even though you'd really like to sometimes, because you see what fallout their horrid behavior has done to some people, you cannot risk frightening genuine complainants off.

Complainants tell you a whole lot of useful things about your services and how you deliver your services. And there are a lot of very vulnerable people out there who have great difficulty making a complaint. It's not that there is this sea of nasty people out there wanting to make complaints.

Nevertheless, it is likely that line managers may feel under threat from the risk of false or vexatious allegations, and this can only be addressed through transparent and evenhanded investigation processes. Chapter 10 of the first report noted that relatively few organisations included any description of sanctions for those making false or vexatious allegations. Of the 24 items assessed, this one was ranked 21st in the incidence of its appearance. Organisations are encouraged to include this element in the procedures and also to include in their awareness rating programs that the organisation will be neutral and evenhanded in investigating and dealing with reporter complaints that involve a particular employee.

Natural justice

One issue that came up a number of times in the interviews was the perception that one of the reasons that confidentiality was being breached was that this was a requirement of natural justice. Some managers and investigators insisted that it was necessary for the name

of a reporter to be revealed when a serious allegation was made in against another person. In fact, the revelation of a reporter's name is typically not required by natural justice. However, the person against whom the allegation should be made aware of the substance of the allegation and given the opportunity to refute it, prior to any decision regarding action being taken against them.

In some jurisdictions, there is a legislative requirement that organisations can only provide the name of the reporter if it is essential to do so for the purposes of natural justice and, as well, it is unlikely that a reprisal will be taken against them as a result of that disclosure. That approach clearly has some benefits and organisations are encouraged to consider including this in their own procedures.

While the person may come to some conclusion as to who the reporter was, it is not a requirement for organisations to reveal the identity of the reporter. Organisations must also provide clear advice to supervisors and managers about to whom, when and by whom information about allegations needs to be given to persons affected, for reasons such as natural justice.

Sample content for policies & procedures

Assessment of report

All reports of wrongdoing will be recorded and streamed to the appropriate part of the organisation to be investigated and dealt with.

There may be occasions when a report is referred to (name of integrity agency). You will be informed if this occurs.

On receipt of your report a decision will be made about the appropriate level of investigation. It may be that the person who receives your report undertakes that initial investigation and makes a decision not to take the matter any further. You will be advised of this. Where your report is to go to another area of the organisation for investigation, you will also be informed of this.

Risk assessment

Whenever any manager in this organisation receives a report of wrongdoing, that manager is under an obligation to consider the possibility that the person making the report may suffer some form of reprisal as a result of those actions. It is the responsibility that manager to assess the actual and reasonably perceived risk of victimization or unlawful discrimination.

The process of risk assessment will include input from the person making the report.

Having assessed the risk, that manager is responsible for notifying the (designated officer above).

Consistent with the level of assessed risk, arrangements will be put into place to protect the staff member who made to the report and, where practicable, their anonymity. At all stages in this process, the staff member will be kept informed.

Also, all managers in this organisation have an active obligation to report to (designated officer above), any reports they receive that indicate that action against a staff member in reprisal to a report is occurring. They also have an active obligation to report any suspicions they may themselves that action against a staff member in reprisal to a report is occurring.

Responding to reprisals

Where the organisation becomes aware that there is some form of action against you, the organisation will take immediate steps to investigate your concerns and, where it is established that the reprisal action is occurring, take all steps possible to stop that activity.

An investigation will be undertaken by a senior and experienced person who has not been involved in dealing with the initial report of wrongdoing. The results of that investigation will go to (CEO or deputy CEO) for a decision.

Any persons in the organisation who have been found to engage in victimization or unlawful discrimination will be the subject of disciplinary action (or action for breaching relevant whistleblowing legislation).

You will be kept informed of the progress of the investigation and the outcome.

The CEO of the organisation may issue specific directions to assist in your protection from any of the actions mentioned above. The nature of the action that will be taken to protect you is dependent upon the circumstances and seriousness of the reprisals that you are likely to suffer. The possible action that may be taken could include:

- the issue of warnings to those alleged to have taken detrimental action against you;
- relocation within the current workplace;
- transferring you to another position to which you are qualified;
- granting leave of absence during the investigation of the wrongdoing that you have reported.

You have the right to request that the organisation take positive action to protect you against reprisals.

Confidentiality

It is often very important in the handling of a report of wrong doing that appropriate confidentiality be maintained. Confidentiality may be important in protecting you against reprisals, as well as being important to protect any other persons affected by your report.

When we talk about confidential information what this may include is:

- the fact a disclosure has been made;
- information about your identity, occupation or address or any person who may be the subject of a report of wrongdoing;
- the actual information that has been disclosed in the report;
- information about a person's personal affairs that comes to light as a result of the investigation; and
- information relating to the disclosure that, if disclosed may cause detriment to any person.

When dealing with a report of wrongdoing, this organisation will fully comply with the relevant privacy legislation.

You should be aware that while every attempt to protect confidentiality will be made if it is practical and appropriate, there will be occasions when your identity will become known to others or disclosure of your identity may be required by law. These include;

- responding to a subpoena or some other court order;
- responding to a research warrant;

- responding to a notice to produce or any other compulsive that means required or authorized by law;
- a direction by a Parliamentary Committee; and
- court proceedings.

You will be advised if your identity needs to be revealed so as to further the process of the investigation of your report. Your consent will be sought before your identity is revealed, however, circumstances may occur where your identity will need to be revealed even though you have not given consent. The organisation will attempt as far as possible to avoid this situation.

In protecting your confidentiality, this organisation will ensure that the details of your report, the investigation and related decisions will be classified and stored securely.

While this organisation will be prepared to take all steps necessary and appropriate to protect the confidentiality of the information that you have provided, you also have some obligations. You should not talk to any unauthorized person about the report that you have made and, in particular, disclose any information you may have been told about the progress of the investigation.

Protection from disciplinary action

When it you make a report of wrongdoing to a person authorized to receive it, this is not a breach of those disciplinary provisions or legal requirements requiring you not to make an unauthorized disclosure of official information.

False allegations

If, in making your report, you knowingly make a false or misleading allegation against another person, you may be the subject of misconduct proceedings yourself.

Rights of persons against whom an allegation is made

When this organisation receives a report of wrongdoing, it is often necessary to interview employees in the area where the suspected wrongdoing has occurred. These interviews will be conducted by an investigator appointed by this organisation.

If you work in an area where a suspected wrongdoing has occurred, or you are the subject of a report of wrong doing, you should note the following:

- you are encouraged and expected to assist the investigator;
- if any allegations have been made against you, you will be notified formally about the nature of those allegations;
- you may have a person of your choice present at the interview. That person might be a colleague, union representative, legal representative or an interpreter;
- you will be given an opportunity to make a statement, either orally or in writing;
- if the allegations are referred to the police, you have a common law duty not to obstruct them in the inquiries;
- if in the course of the investigation evidence emerges that you might be involved in the commission of a criminal offence, you will be informed of your right to refuse to answer questions and cautioned that anything you say will be recorded and may be used in evidence against you. This caution does not mean that you are assumed to be guilty. You will also be informed of your legal rights. When you are being interviewed by an investigator and you think that what you may know may lead to a belief that you are implicated in the wrongdoing, you have the right not to answer any questions; and
- where possible and appropriate, your confidentiality and privacy will be respected.

4. Internal witness support and protection

The unmet challenge

The support and protection of whistleblowers is the third, and arguably most important major objective of any whistleblowing program. However as demonstrated in the first report (chapter 9; Brown and Olsen 2008), the provision of organisational support to whistleblowers is currently the single weakest area of most agencies' responses.

From that analysis, it is already clear that the bulk of agencies, in most jurisdictions, need to give active and urgent consideration to strategies for providing whistleblower support. In particular, agencies need to develop programs, commensurate with their own size and needs, for ensuring that support strategies are directed and where necessary, directly delivered, by persons with an institutional role that conflicts as little as possible with the challenges often implicit in providing that support.

As a further indicator of the need for strengthened approaches in this area, across the pool of case study agencies, managers and casehandlers themselves were often unconvinced that their agencies had a very strong commitment to whistleblower support, and tended to have even less conviction that they were being effective in delivering that support (Table 4.1):

Table 4.1. Managers and casehandlers' view of degree of organisational success

Issue	Case-handlers			Managers		
	Mean	SD	N	Mean	SD	N
Commitment of organisation to protecting reporters (1=not at all strong, 5= extremely strong)	3.49	.99100	340	3.70	.90498	535
Effectiveness of organisation in managing the welfare of reporters (1=not at all effective, 5= extremely effective)	3.05	.91028	338	3.23	.82631	532

Managing the internal reporting of wrongdoing survey q59, 60

Nevertheless, the results across the case study agencies show that some organisations are considerably more successful than others in tackling this challenge. Key indicators of the relative success of different agencies in delivering support are mentioned below.

All agencies confront the dilemma of the appropriate scale, resourcing and organisational model of internal witness support. As pointed out in section 1.3, commitment of resources is

a key indicator of organisational commitment to the whistleblowing program as a whole. These practical issues of scale and model are addressed in section 5.

Whichever options are chosen, evidence from across the case study agencies points to common elements, *all of which* must be present in any organisation's approach *in some form* if the program is to have some prospect of success. This section outlines these elements.

The results from the research, interviews and case study agency workshops confirm the direct and indirect benefits of more systematic approaches to the provision of support.

Beyond simply the question of compliance with legislative compliance, lies the reality that while positive or successful whistleblowing experiences often go unnoticed by the bulk of other employees in an organisation, negative outcomes can often become well-known, costly and debilitating to organisational moral and performance.

The first report (p.127) showed the strong relationship between whistleblowers' perception about their treatment by the organisation, and their stated willingness to report wrongdoing again. While the factors influencing employees' stated willingness to report again are complex, the experience of the case study organisations confirmed the importance of organisational support for preventing or containing employee perceptions of mistreatment in many of the cases where it was provided.

Figure 4.2. Likelihood of reporting again among all reporters by case study agency (%)

Employee Survey Q34

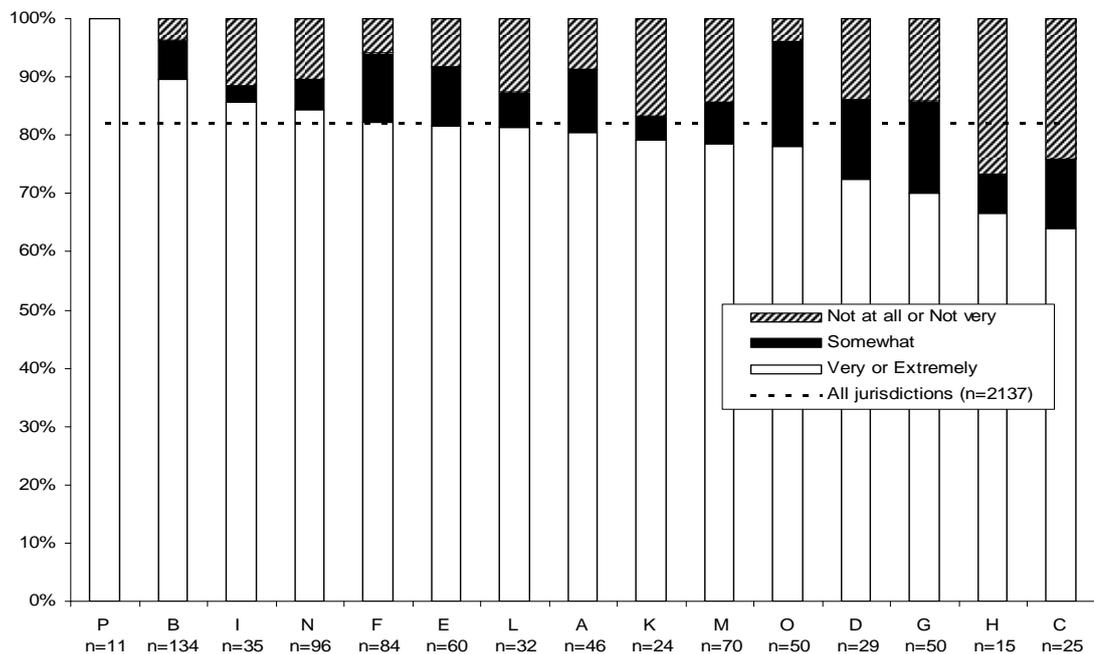


Figure 4.2 shows the varying proportions of all reporters within each case study agency, who indicated whether, if they had their time over again, they would still report. While overall, 82 per cent of reporters among the case study agency respondents indicated they were very or extremely likely to report again, this ranged from 64 per cent in Agency C to 90 per cent in Agency B (and 100 per cent in Agency P, noting the small number of respondents).

An even more pervasive reason for providing support, was confirmed to be the importance of disclosure experiences for defining whether the agency was able to deliver on commitments to provide its employees with a safe, healthy and productive workplace.

A particular breakthrough from the research, was the lesson for some agencies that internal support for whistleblowers was not necessarily a totally new or different strategy to other programs for maintaining or restoring healthy relationships within the workplace – even if more complex than most other workplace health and safety issues.

The important relationship between organisational strategies for ensuring workplace health and safety, and whistleblower support was recently confirmed in Victoria. There, Justice Judd of the Supreme Court confirmed that under that State's *Whistleblowers Protection Act*:

Detrimental action includes injury but importantly, extends to what may be described as collateral damage to a person's career, profession or trade, all of which may be apt to describe aspects of loss and damage suffered by employees.... The breadth of the compensable loss and damage under the Act [means that], notwithstanding an overlap that might occur in the case of injury [under the *Accident Compensation Act*, the *Whistleblowers Protection Act*] creates a new, novel and additional class of rights and remedies to those which already existed... for work related injury.¹

No internal witness support strategy can hope to eliminate every case in which a whistleblower feels aggrieved – whether because in some cases, employee expectations are simply unable to be met; or because the degree of conflict between the employee and management becomes too great or unresolvable; or because despite best efforts, damage to a whistleblower's wellbeing or career is not able to be prevented. However the experience in case study agencies confirmed that most agencies have both an opportunity – and a responsibility – to significantly reduce the number of employees falling into these categories, thereby fulfilling their obligations to their employees, lessening the costs of disclosure-related conflicts, and earning greater public confidence in their own integrity.

4.1. Sources of support

Checklist items:

- One or more designated officers with responsibility for establishing and coordinating a support strategy appropriate to each whistleblowing case
- Proactive (as well as reactive) operation of the support strategy, i.e. management-initiated rather than simply complaint/concern-driven
- Support arrangements tailored to identified risks of reprisal, workplace conflict or other adverse outcomes
- Involvement of whistleblower in risk assessment and support decisions
- Involvement of identified support person(s) ('confidant', 'mentor', 'interview friend' or similar) and negotiation of their role

¹ *Owens v University of Melbourne & Anor* [2008] Supreme Court of Victoria No. 174 (27 May 2008) per Judd J

Designated responsibilities for support

The crucial lesson from the experience of case study agencies was that decisions and responsibilities for the welfare of whistleblowers should not be left to chance. There was almost universal consensus that organised support for employees who report wrongdoing is frequently vital to preventing or minimizing the intra-organisational conflicts that can easily accompany reporting. The greatest difficulties were found among the many agencies where management responsibility for the provision of disclosure-related support was absent, confused, and/or not backed up by the necessary resources.

Table 4.3 summarises the sources of help and support accessed by public interest whistleblowers surveyed across the case study agencies (for more detail, see p.215 of the first report). It also highlights whether each source of support became more or less reliable, if the whistleblower went on to experience bad treatment of harm after reporting.

Table 4.3. Sources of help, assistance and support to whistleblowers (per cent)^a

Sources of help & support	Total (%)	
	After report (n=213)	After harm (n=139)
1. Other work colleagues at my level	50%	52%
2. My family	44%	52%
3. Other work colleagues below my level	22%	25%
4. A union or professional association	16%	19%
5. My supervisor	16%	10%
6. A counsellor or counsellors	14%	22%
7. Senior managers	13%	8%
8. Internal ethics, audit, investigation unit	12%	5%
9. Human Resources / EEO unit	7%	4%
10. External government watchdog agencies	4%	2%
11. Member(s) of Parliament	3%	4%
12. Internal support program	2%	5%
13. Whistleblower support group	2%	4%
14. The media	2%	3%
15. Other community based support	2%	1%
16. Other specialist officers or units	1%	1%

^a Column totals do not add to 100 per cent because multiple responses were permitted.

Source: Internal witness survey: Q47 ('Which of the following assisted or supported you after you reported?') (after report); Q57 ('Which gave you good help and support after you experienced bad treatment or harm?') (after harm). See Brown 2008, p.215.

The results reinforce the informal and non-organised nature of the support most whistleblowers receive. Where informal, personal supports such as colleagues, family and friends are weaker, organisational support does not appear well positioned to take up the slack. Importantly, while the most frequent sources of organisational support are from line managers (my supervisor, senior managers), this support frequently evaporated with increasing post-disclosure stress and conflict. The tenuous nature of this informal organisational support was captured by a number of internal witness interviewees:

Interviewer: Did the organisation give you any support to deal with the reprisal or negative consequences that we touched on?

Internal witness: [B]ranch directors who were certainly supportive in having a cup of coffee. Some of them were interested to know what was... going on and some of them were genuinely taking a supportive role. ... [I]t would be a secluded coffee shop because they didn't want to be seen by this manager to be directly communicating or working with me.

Similarly:

Interviewer: Clearly you went through this very negative experience, was there anyone in the organisation that sort of helped you get over the process and –

Internal witness: No, a couple of people I found very frustrating. Probably, with the people at one level above who could see what was going on, would empathise with us personally, but then they're not willing to bat for us, mainly because they couldn't see ... so a reflection on the process, I guess. No, no support at all, fairly negative sort of experience as you suggest.

As outlined in the first report (p.210), crucial questions are posed by the research results about the size and reach of existing formal internal witness support programs. However it is significant that all 15 of the case study agencies employing the respondents in Table 4.3 told the project that they had systems and procedures for identifying internal witnesses in need of 'active management support', and nine of the 15 agencies said that they had a formal internal witness support program.

The good news from Table 4.3 is that for the few whistleblowers with access to support from a central, formal program, its usefulness increased rather than decreased with rising workplace conflict. The problem appears to be that such programs face problems of accessibility, proactive capacity, reach and scale. These issues are discussed further below and in section 5.

The more basic lesson is that all agencies need to ensure that at least one, and preferably more than one, manager within the agency has a designated responsibility to provide – or coordinate the provision – of active management support to all whistleblowers in need or potential need. Obviously, those designated need to have appropriate capacity and expertise, and be appropriately positioned within the organisation to fulfil this role. In most circumstances they will coordinate, or share responsibilities for support with others, including line managers (see below). However it is crucial that they have formal responsibility for the provision of support, to deal with the complex and often high-conflict circumstances that may arise, and to ensure that management decisions in relation to the whistleblower are appropriately guided, monitored, adjusted and where appropriate, initiated.

The consequence of current weaknesses in responsibility for support is a higher-than-necessary proportion of internal witnesses reporting the following experience:

Interviewer: Were you given much in the way of advice or support during that process, after you inadvertently reported what was going on...?

Internal witness: No, it was the opposite. I was belittled, I was harassed, I was told to be quiet, I was given zero support.

Importantly, many managers and casehandlers in the case study agencies were not proud of the level of management support given to internal witnesses. Some managers interviewed took a contrary view, stating that persons bringing forward allegations of wrongdoing were typically acting vexatiously (a minority view, as discussed earlier), and that consequently, too much emphasis was being placed on support services for reporters. Other managers believed the organisation was probably doing the best it could, but nevertheless recognised that this does not necessarily mean an optimal level of success:

Interviewer: How effective do you think that the support mechanisms in your organisation are for protecting and supporting people who reported wrongdoing?

Manager: I would think that they're okay. I don't know whether the people that have reported wrongdoing would agree. I think that they feel that they've been left out on a limb.

Casehandlers (mostly internal investigators) were frequently more critical about the management effort placed behind internal witness support, when asked about the range of cases they had observed:

I just think it's something we do so terribly bad (sic) at all levels. People are... more interested in covering their own tracks and keeping their own backsides clean, basically, than looking after the person who has reported the matter. The person who reported the matter is actually isolated into the 'baddie' situation. So they're not supported at all. All levels of organisation in the process tend to run away and make sure that they're not going to be getting into trouble for anything. That person that's reported it? Very isolated.

Similarly:

If it's to do with the wrongdoing, as in criminal or serious misconduct, I believe it's pretty good. If it's to do with administration, all shitty bosses and stuff like that, I reckon it's pretty bad.

Pro-active operation

The problem with many management assumptions regarding internal witness support was summed up by one case study agency manager when interviewed:

I think (the organisational culture) is fairly reactive. I think there's a lot of espousing of protection but the reality on the ground is that there is not a lot of protection that occurs.

The research produced considerable evidence that most decision-makers in most organisations continue to passively wait for workplace problems to arise, or for reporters to come forward requesting assistance or stating concerns regarding organisational mistreatment. Accordingly critical issues regarding the risks confronting most reporters, and

what strategy might deliver effective support, are not addressed until risks are manifesting into reality. This evidence reinforces the importance of the risk assessment process recommended to begin as early as possible in the handling of disclosures, as set out in section 3.2. The research has also demonstrated the need for a proactive approach to the provision of support to be embedded in most organisations in a number of further ways:

- In the survey of agency practices and procedures, 46 per cent of all agencies (N=298) answered 'no' when asked whether they had even basic procedures for identifying internal witnesses who may need active management support;
- This was confirmed by the assessment of the content of agency procedures, in which both procedures for the 'active management and support of internal witnesses' and 'rights of the whistleblower to request positive action by the entity to protect them' (itself a somewhat reactive principle) rated as often missing or weak in agency documentation (Roberts, 2008, p.246). In that analysis, it was noted that organisations were far more likely to include procedural elements relating to the receipt and investigation of reports, than those relating to the protection of reporters against reprisals;
- Consistently with this result, it was noted by some interviewees that in some organisations, most notably large ones, there were differences in the levels of implementation of whistleblowing policies and procedures, with some areas described as others proactive but others reactive;
- Reliance on employees to self-identify as needing support, was discussed in the first report (p.211) as requiring a high level of staff awareness of the availability of the support program; and for staff to self-identify not simply as a 'whistleblower', but as one unable to self-manage the situation. Anecdotally, there continues to be evidence that many deserving staff may prefer not to access specialised support, at least initially, for fear of possible negative effects of being tagged as a whistleblower; while staff who see whistleblowing processes as possible alternative means for pursuing a personnel or private grievance, may be very ready to try to enlist in such a program;
- As noted in Table 4.4, there is nevertheless some uncertainty among agencies about the best methods for identifying those employees who are in need of organised support, and for admitting them to any organised program; and
- If agencies do not possess a sufficiently integrated system for tracking and notification of wrongdoing reports, discussed in section 3.1, then management may be limited to a reactive approach, due to insufficient understanding of the level of whistleblowing within the organisation, being handled by supervisors and other managers in the first instance, with the benefit of any oversight or support until conflict arises. The extension of effective systems for the receipt and notification of disclosures, to ensure that appropriate responses can internal witness support, is an important priority

Irrespective of who is responsible for providing it, a proactive approach to support thus requires the integrated organisational approach described in earlier sections and section 5. When wrongdoing is reported, employees are entitled to expect that the organisation will act on its own initiative to assess the need for support, and provide it where needed, rather than turning its mind to support only when concerns are raised or complaints of reprisals made. Whether agencies are able to open this 'gateway' to organised support is a major indicator of whether management is prepared to 'walk the talk' of their whistleblowing program.

Table 4.4. How internal witnesses access available support (%)

Agency Survey Q28

	All agencies (n=162)	Employee Survey agencies (n=70)	Case study agencies (n=15)
The internal witness must approach a designated person in the agency	27% (43)	30% (21)	27% (4)
The internal witness is approached by a designated person in the agency	23% (38)	27% (19)	27% (4)
Combination of the above	15% (24)	17% (12)	33% (5)
Our agency's procedures do not specify	19% (31)	20% (14)	7% (1)
Other	27% (44)	20% (14)	20% (3)

Support arrangements to address identified risks

As noted earlier, the first report (p.133) demonstrated the high risks of detrimental outcomes that surround public interest whistleblowing. On average across all agencies studied, a significant proportion (22 per cent) of employees who reported public interest wrongdoing perceived themselves as having been mistreated as a result, with about 43 per cent overall suffering extreme stress, and about 62 per cent suffering at least some stress.

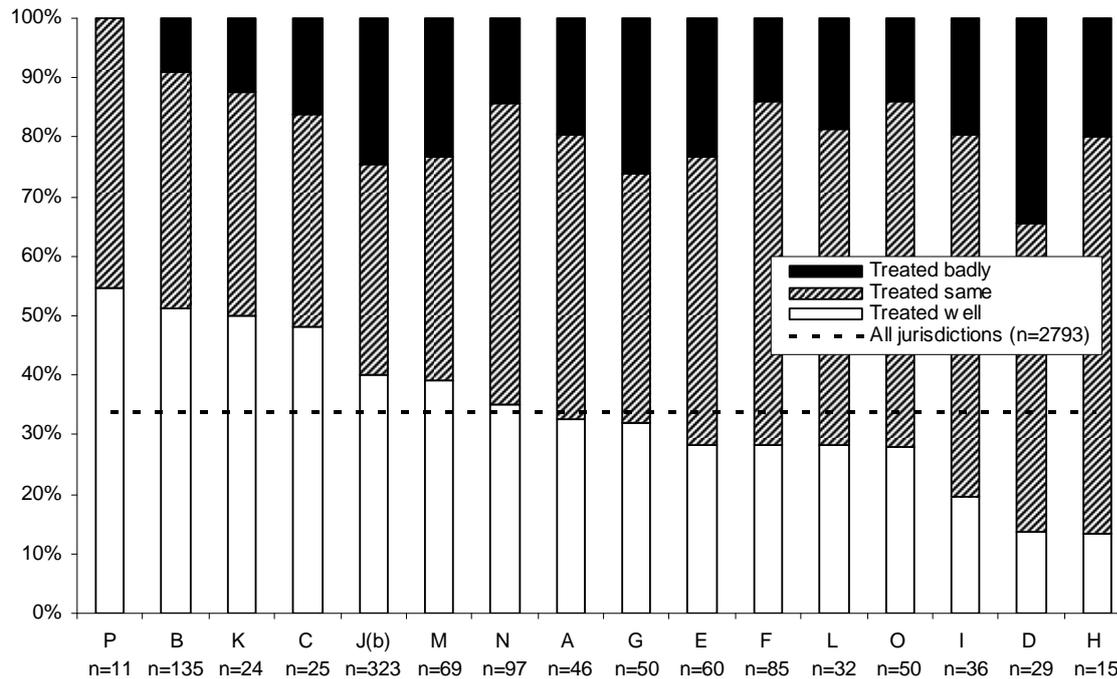
These results varied considerably between agencies, including the case study agencies, as seen in Figure 4.5. This figure ranks the case study agencies according to the proportion of reporters who perceived that they were treated well by management as a result. While the first report focused on the proportion of whistleblowers who report being treated badly, a positive measure was chosen for comparing the case study agencies since there may always be some employees who feel they were treated badly even when objectively they were treated professionally. The proportion of employees reporting that they were treated well provides a more objective indicator of good performance, since there is no guarantee that *any* employee will ever claim to have been treated well.

For agencies to maximize the chance of performing well on such a measure, the research identified the importance of support strategies being designed to address the *actual* risks faced by most whistleblowers – as identified through the risk assessment approach discussed earlier – rather than assumptions or stereotypes.

Tables 4.6 and 4.7 repeat survey results from internal witnesses, casehandlers and managers within the case study agencies, indicating the most frequent types of mistreatment and adverse outcome experienced by whistleblowers. Importantly, these often appear superficially to be low-level adverse outcomes, which many employees might normally be expected to endure and survive without difficulty.

Figure 4.5. Treatment by managers – All case study agency reporters (proportion)^a

Employee Survey Q30

**Table 4.6. Most common reported forms of adverse effect – whistleblowers, case handlers and managers**

Bad treatment or harm	Ranking by:		
	Whistleblowers	Case handlers	Managers
Threats, intimidation, harassment or torment	1	1	1
Authority undermined	2	6	4
Illness	3	3	5
Motives for reporting questioned	3	4	3
Work heavily scrutinised	5	5	6
Ostracism	6	2	2
Forced to work with wrong-doers	7	9	7
Unsafe or humiliating work	8	14	20
Essential resources withdrawn	9	20	23
Missed promotion	10	10	10

Internal witness survey q53 Managing the internal reporting of wrongdoing survey q48

Table 4.7. Feelings experienced by case study agency reporters (ranked in order)

Feelings	Scale	N=220	
		Mean	SD
Stress	1= more stress to 5= less stress	1.73	1.050
Trust	1= decreased trust in organisation to 5=increased trust	1.77	1.132
Frustration	1= frustration to 5= satisfaction	1.78	1.135
Betrayal	1= betrayal to 5= support	1.89	1.143
Anxiety	1= anxiety to 5= confidence	1.91	1.088
Power	1= powerlessness to 5= powerlessness	2.03	1.154
Persecution	1= persecution to 5= affirmation	2.15	1.152
Mood	1= increased mood swings to 5= decreased mood swings	2.26	1.025
Connection	1= withdrawal to from others 5= connection with others	2.31	1.125
Self-esteem	1= decreased self esteem to 5=increased self esteem	2.54	1.229
Self worth	1= decreased self worth to 5=increased self worth	2.65	1.271

Internal witness survey q48

The reality as described by the research is that these outcomes are indicative of changes in the wellbeing and career of a whistleblower that may be extremely debilitating and destructive, and which every employer has a responsibility to prevent, minimise or address. This is especially the case because some outcomes may be inflicted passively or negligently by an organisation, simply through lack of organisational support or failure to assist managers to treat employees in an appropriate way.

When interviewed, some internal witnesses were frank about the potential severity of the impacts that can flow from a whistleblowing experience:

And the next minute I'm sitting there and I'm home, and I didn't have a clue at that point. My marriage broke up, I lost my house. He even put in the affidavits for our separation that he was sick to death of me whingeing about (name of organisation). There was a two and a half year property settlement because it was a very ugly bust-up. I lost my father, my job, my house, my partner. I thought, if I don't protect myself I'm going to crack. I don't believe that I did at any point. As far as Workcover were concerned, they thought I was suicidal. I'm sure they did.

Similarly:

I've gone through the phase where I've considered all the options and I had reached the conclusion that it was easier for me to kill myself and not put up with all this stress because by killing yourself you move, what I call the stress conductor, into your family. The family suffers initially for a year or two, they're upset and stuff but generally they get over it and their lives continue, but as a whistleblower you just never get over it. It's always there.

Section 3.2 discussed the circumstances in which the research indicates a higher risk of perceived mistreatment and neglect may arise.

The first report also identified that perceptions of mistreatment by management are also more likely to be a problem, in most agencies, than stereotypical assumptions that reprisals are most likely to stem from individuals or groups of co-workers.

This mismatch in expectations is further confirmed above by Table 4.6, where case handlers and managers appear reasonably accurate in their description of the most common adverse effects – with a noticeable difference in the ranking given for ostracism. While reporters themselves ranked ostracism as being the sixth most common adverse effect suffered, both case handlers and managers perceived it as being second most common. This finding is in accordance with an over-estimate of the significance of adverse reactions from co-workers, when the more common problem is adverse reactions from managers.

The same trend is indicated in Table 4.8 below, which presents means indicating the treatment perceived by whistleblowers (generally and in the case study agencies), against estimates of treatment by casehandlers and managers (in the case study agencies). Case handlers appeared to be a fairly accurate in predicting the level of adverse effect from bad treatment by management whereas managers underestimated the level of bad treatment by management. Both case handlers and managers overestimated the degree of adverse effect caused by co-workers to the reporters.

Table 4.8. Reported level of adverse effects – whistleblowers, case handlers and managers

	Treatment by managers (1= extremely well 5= extremely badly)			Treatment by co-workers (1= extremely well 5= extremely badly)		
	Mean	SD	N	Mean	SD	N
Non-role reporters; employee survey (all agencies)	2.92	1.042	1477	2.67	.879	1457
Internal witnesses (case study agencies)	3.78	1.141	222	2.88	1.084	218
Case-handlers (case study agencies)	3.11	.90729	334	3.38	.73928,	333
Managers (case study agencies)	2.72	.88641	528	3.23	.76707	519

Employee survey q30 & 31, Internal witness survey q50 & 51, Managing the internal reporting of wrongdoing survey q32 & 33

These results confirm the important linkage between whistleblowing and the health, safety and well-being of employees. The very clear responsibilities of organisations for the health, safety and well-being of their employees needs to be manifested in effective whistleblower support schemes that deal with these issues.

Involvement of the whistleblower

The research confirmed that it is important that whistleblowers and internal witnesses be actively involved in all key risk assessments and decisions regarding the support arrangements to be put in place around them.

As discussed below, effective communication, advice and feedback was generally confirmed by study participants to be a vital ingredient in maintaining the wellbeing of whistleblowers. In the workshop discussions, case study agency representatives also confirmed the special importance of this approach, for ensuring that risk assessments are fully informed and accurate from the perspective of the whistleblower; that support strategies are well designed, and operating with the whistleblower's consent; and that both the agency and the whistleblower have good records of the measures taken to prevent and contain workplace problems associated with their reporting.

Involvement of identified support persons

The experience of the diverse group of case study agencies confirmed the importance of a wide range of potential support persons in the delivery of strategies to prevent and contain workplace problems associated with reporting.

A common primary objective of support strategies is, in effect, to create a network of persons around the whistleblower with the authority, skills and capacities needed to offset the risk of the individual suffering personal or professional harm. The anticipated harm can be both subjective (in terms of the stress of exposure to wrongdoing and/or the investigation process, and associated changes in self-image) and objective (in terms of actual likely conflict with colleagues, managers or the organisation as a whole).

By 'scaffolding' the whistleblower with additional psychological and professional support, support persons are expected to:

- Help identify and rationalize reprisal risks;
- Assist the whistleblower to cope;
- Help identify any actual emergent reprisals or problems, including early warning that confidentiality has ceased or been breached;
- Help identify when management intervention is needed in the workplace to address reprisal risks or other conflicts;
- Provide alternative, trusted avenues of communication between the whistleblower and investigators or managers (or both) at difficult times;
- Help provide workplace leadership among their peers, in response to conflicts;
- Provide ongoing support to help the whistleblower get back on an even keel; and
- Provide independent verification of the decisions taken to manage the case, as well as the success or otherwise of the strategies adopted.

The responsibilities of support persons often complement the formal responsibilities of managers for the welfare of their employees (for example, an internal witness support coordinator, case manager, supervisor, line manager, human resource manager or CEO).

Some sources of support were canvassed earlier in Table 4.3. They include a number of persons external to the organisation, whose service in this role is capable of being formally recognised and acknowledged. One large case study agency contracts former experienced managers of the agency (now retired) to provide mentoring-style support to whistleblowers on an as-needs basis. Some larger agencies also offer professional staff such as welfare officers, counseling staff or career development officers.

Within different agencies, two different types of non-specialist support person are sometimes acknowledged as having recognised roles in the process. Both are potentially relevant in any particular model of internal witness support, as discussed below in section 5.1:

- 'Confidants' or 'mentors', being experienced officers who volunteer and are vetted by management to be available to provide informal support to internal witnesses, on an *ad hoc* but formally recognised basis (especially from outside their normal workplace and line of management reporting); and
- 'Peer support persons', being officers from within or close to the whistleblower's own workplace, e.g. a trusted and capable friend who is confirmed by internal investigators and the internal witness support coordinator as appropriate to be trusted with potentially confidential information in relation to the individual case.

The research suggests that only relatively few agencies are making use of practical, low-cost strategies such as this to deliver support, in a formally recognised way. However the case study agencies that ranked best in the comparative analysis of outcomes were conspicuous for having well-developed strategies of this kind.

4.2. Information and advice

Checklist items:

- Provision of information, advice and feedback to internal witnesses on actions being taken in response to disclosure
- Provision of information about how to manage their role in the investigation process, including whom and when to approach regarding issues or concerns
- Access to appropriate professional support services (stress management, counseling, legal, independent career counseling)
- Information and advice regarding external regulatory or integrity agencies that can be accessed for support

Information, advice and feedback

Regular and accurate information, advice and feedback to internal witnesses on action being taken in response to their disclosure was confirmed by the research as crucial to the minimization of real and apprehended mistreatment risks of whistleblower mistreatment.

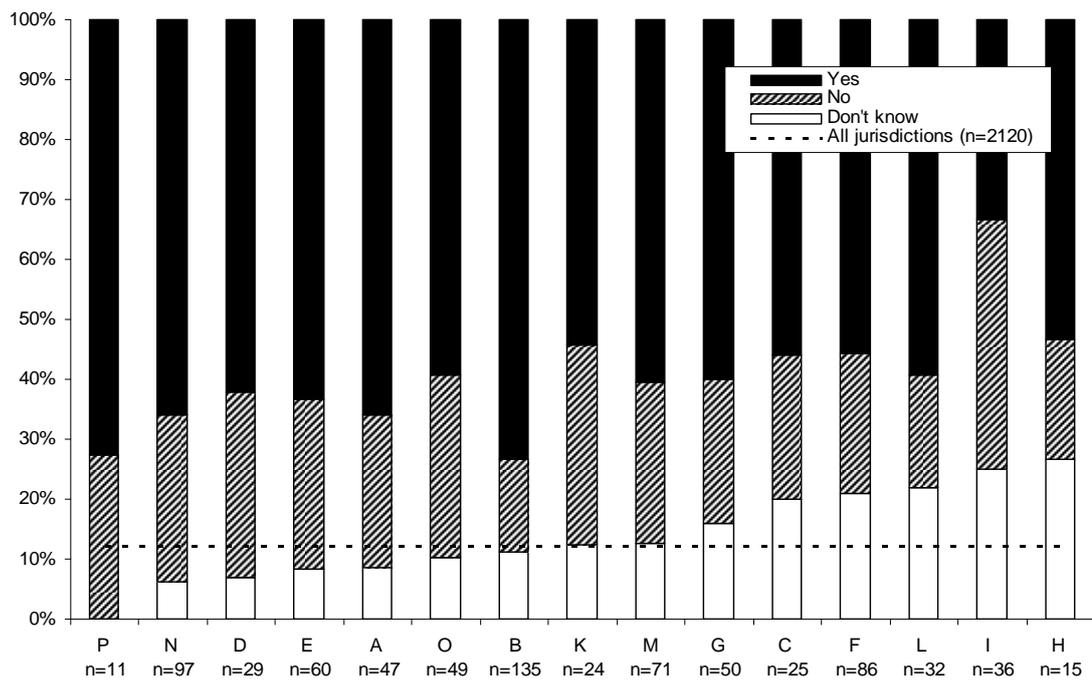
Key results were discussed in chapter 5 of the first report. Figure 4.9 also shows the variation between the case study agencies, ranked on one key measure of adequacy of information and advice – the proportion of reporters who knew whether their disclosure was

even investigated at all. The agencies are ranked according to the proportion who did not know one way or another, since while there may be a number of legitimate reasons why agencies may not investigate a report of wrongdoing (e.g. lack of jurisdiction, or the matter does not warrant it), with the exception of anonymous reporting, there is little justification for agencies not informing whistleblowers of whether or not their report will be investigated.

There was a strong correlation between agencies with a proportion at or below the national average, and the agencies ranked as best-performing against all whistleblowing outcomes.

Figure 4.9. Knowledge of whether investigated – All reporters (proportion)

Employee Survey Q32



Conversely, among the case study agencies were many whistleblowers for whom lack of sufficient information was a clear source of grievance and increased stress, and an indicator of likely instability and conflict. Table 4.10 summarises the degree to which on average, respondents to the internal witness survey within the case study agencies felt they had not been kept very well informed about progress and outcomes of the investigations affecting them:

Table 4.10. Feedback (internal witness perceptions)

Issue (all scaled 1='not at all' to 5= 'extremely')	Mean	SD	N
How well informed about progress of initial investigation	2.05	1.211	221
How well informed about outcome of initial investigation	2.13	1.248	220
How well informed about progress of further investigation	2.15	1.198	137
How well informed about outcome of further investigation	2.11	1.206	134

Internal witness survey q33, 35, 41 &43

For the internal witnesses who proceeded to interview, lack of feedback was a very common theme and often associated, in the minds of the reporters, with the adverse effects caused by the whole reporting process – for example:

Interviewee: In relation to being kept informed by ... the management who had responsibility of this matter that you reported – how well were you kept informed?

Internal witness: We weren't, and I think that fed to our anxiety because, as I said, two or three weeks after we had reported it we hadn't been told anything. We hadn't been told what was the next step, we hadn't been told where they were up in the investigation – nothing like that. And as I said, that's why I went to see the (name of supervisory position), because I felt that I wasn't getting any input or any contact from the HR person. So I spoke to her about it, who then got him over and yeah, so no. Very poor – and that meant we felt that we would've perhaps managed it better if we had been better informed.

Managing expectations about investigations

The research confirmed the crucial importance of information being provided to reporters to help manage their role in the disclosure and investigation process, including to whom and when to approach regarding workplace issues or concerns. A central issue, also already identified in the first report, was that of managing whistleblowers' expectations regarding outcomes from an early stage.

Managers of whistleblowing units highlighted the importance of getting to reporters early in the process (preferably while still at the stage of considering whether to report wrongdoing) to talk through their expectations, how realistic those expectations were, and the sorts of outcomes that they could expect. In particular, it was important to stress to potential reporters that, depending on the nature of the case, they should not usually share concerns with colleagues, and instead talk to investigators and support staff about with whom else they should discuss the report.

Such early intervention is particularly important where employees come forward indicating that they wished to make a disclosure, with a history of existing difficult relationships within the agency. In those circumstances, it was important to identify early whether expectations were unrealistic and manage the case accordingly. As one manager said:

People have very unrealistic expectations of what will happen. Sometimes they'll make allegations thinking that someone will be sacked. I will often ask people, if they speak to me directly, what it is they are expecting.

Agencies also reported in the workshops that line managers could be a key component in a successful whistleblowing regime by managing these expectations. However one agency noted that there was the potential for line managers to attempt to squash a report where the complaint related, or impacted upon, them -- highlighting the importance of having multiple reporting pathways, as discussed earlier in the report.

Access to professional services

As already noted, external professional services may be key ingredients in organisational support for whistleblowers. Many agencies utilize external counselling (i.e. clinical psychology) services to assist whistleblowers with the management of stress related to their

exposure to alleged wrongdoing, the investigation process and/or workplace conflicts including adverse investigation outcomes. In Table 4.3 earlier, it was notable that 'a counsellor or counsellors' ranked as a significant source of whistleblower support, whose value for whistleblowers increased when things became difficult and the value of many other organisational supports tended to decrease.

In Table 4.3, unions were similarly nominated by a significant proportion of whistleblowers as a source of support, which increased slightly in value as things became more difficult. This was a positive indicator of the potential role that unions and professional associations can play. However the interviews with internal witnesses also revealed a complex relationship with unions:

The union were absolutely useless. In fact so much so that I'm not convinced that they're representing the (name of professional group) at all. The huge problem there is I'm a member of the same union as (name of supervisor) who is the (supervisory position).

Also:

The welfare officer from the (name of union) was a nightmare. She chopped and changed with the wind. One minute it was, they've shafted you. The next it was, just go back and get on with it. She was rude as.

The responses indicated the value of agencies engaging directly with unions to develop appropriate strategies for helping try and ensure that employees can be provided with useful external support. Agencies are also advised to consider extending arrangements for ensuring that whistleblowers can access other appropriate professional services, including legal support, and independent career counseling support.

Access to external agencies

The value of engaging relevant external regulatory or integrity agencies in the design and delivery of a whistleblowing program (section 1.4) and the importance of advertising external reporting pathways to staff (section 2.3) have already been discussed. It has also been suggested that agencies should ensure that their tracking and referral procedures for all significant reports of wrongdoing include routine notification to the lead integrity agency responsible for oversighting whistleblowing matters in their jurisdiction (section 3.1).

These measures, along with others below, can help organisation's share responsibility for the handling of whistleblowing matters, in circumstances where there may be a high risk of conflict between whistleblower and the organisation. This can occur even in agencies with elaborate support processes, as confirmed by more than one internal witness interviewee:

I would not trust the internal (name of organisation) system because my experience over recent years is just that it doesn't work. It doesn't support anybody and there's no outcome.

If such circumstances arise, or fail to be successfully prevented, it is important that internal witnesses know that they can approach an independent oversight agency as a safety valve. Where possible they should do so with the agency's support. As already noted, the first report (p.310) recommended that governments ensure at least one coordinating integrity agency has the statutory authority and capacity to respond readily to such cases.

4.3. Preventing and remedying detrimental action

Checklist items:

- Clear commitment that the organisation will not undertake disciplinary or adverse actions, or tolerate reprisals including by managers, as a result of disclosures
- Mechanisms for monitoring the welfare of organisation members who report wrongdoing, from the point of first report
- Positive workplace decisions regarding prevention or containment of the risks of conflict and reprisal
- Direct engagement of supervisors or alternative managers in support strategy and related workplace decisions, to maximum extent possible
- Specialist expertise (internal or external) for investigating alleged detrimental actions or failures in support, with automatic notification to external agencies
- Flexible mechanisms for compensation or restitution where there is failure to provide adequate support, or prevent or contain adverse outcomes

Zero tolerance for organisational mistreatment or neglect

For the reasons discussed in section 1, the research indicates that achieving an effective organisational response to whistleblowing includes strong management commitment to ensuring that the organisation itself – including vicariously through the actions of individual managers – will not cause or tolerate detrimental action against an employee, by virtue of their having reported suspected wrongdoing.

However, express commitments to this effect by senior management did not feature strongly among agencies' written whistleblowing procedures (Roberts, 2008, p.246).

On a variety of measures demonstrated in the first report, it is clear that clear management commitment to the protection and support of employees is needed for good whistleblowing outcomes to be achieved.

As shown in Table 4.11, across all agencies the employee survey also collected data on a variables relating to employees' own organisational commitment, as well as on outcomes for employees who reported wrongdoing, such as treatment by management as shown here. Using a standard multiple regression, the table explores the predictive relationship of five factors indicating organisational commitment on the part of employees who reported wrongdoing (outside their regular duties), to better treatment by management.

The analysis indicates that two of the variables were statistically significant in explaining the variance: confidence in management response to whistleblowing, and general trust in management. By comparison, reporters' level of job satisfaction, whistleblowing propensity, and confidence in whistleblowing legislation were not significant as predictors of good outcomes. In this way the research shows that where there is management commitment to respond positively to whistleblowing reports, including supporting employees, this appears to be employees and translate into more positive outcomes for all concerned.

Table 4.11. Organisational culture predictors of reporting outcomes: Standard multiple regression

Outcome = Treatment by management	B	Std error	t-value
Trust in management	.201	0.44	4.5*
Job satisfaction	.040	.041	.988
Whistleblowing propensity	.019	.060	.308
Confidence in legislation	.110	.063	1.76*
Confidence in management response	.566	.061	9.32*
Constant	5.67	.216	26.2*
Adjusted R ²	.385		
N	1477		

* p>0.01

The global organisational citizenship behavior variable was omitted because its relationship to the dependant variable was .187 which is substantially less than the 0.3 to satisfy the multicollinearity assumption.

Monitoring welfare from point of first report

The first report (p.308) indicated a need for agencies to strengthen their capacity to minimise risks of adverse treatment by management – including negligent adverse treatment – through a procedure for routine independent verification of the organisational position (e.g. work performance) of employees who report wrongdoing, as close as possible to the point in time when they first report it. The research confirmed that in many whistleblowing cases, even when it is clear that adverse actions have been taken, agencies can have difficulty separating justified management actions from those that represent unjust or inappropriate action.

It is clear that part of the difficulty in establishing whether the treatment of a whistleblower was or was not justified, often lies in evidentiary difficulties as to whether particular problems associated with an employee's relationships with colleagues or supervisors commenced prior to, simultaneously with or subsequent to a disclosure issue arising.

This procedure is above and beyond procedures for the investigation of allegations about reprisals or failures, discussed below. This procedure is recommended as a proactive measure to help resolve later issues in case they arise, and a preventive measure against unjustified actions being taken. Elements of such a procedure include:

- Clear documentation as to when and how concerns about wrongdoing were first aired
- Collection by a relevant investigator of the evidence existing at the time of the report regarding the reporter's work performance and relationships, undertaken with the knowledge and participation of the reporter, and
- Where a report is still confidential, alternative strategies such as a general audit of the work histories of all employees in the relevant section to establish the relative position of the employee, in parallel with the primary investigation.

Positive workplace decisions and strategies

A corollary of the risk management approach, and proactive support strategy approaches discussed earlier (sections 3.2 and 4.1), is that the support strategy must flow through to any necessary positive workplace decisions, concerning the prevention or containment of risks of conflict or reprisal, before such problems arise.

In the workshops, representatives of the case study agencies agreed that it was hard to predict what can happen in an organisational environment when considering the issue of reprisals. The tendency in such circumstances can be for managers at all levels to back off and what to see what happens, before developing strategies to contain any likely detrimental outcomes. In many such cases, when conflict and stress eventuate, the fact that no strategy is in place to manage it (operationally, as against in theory) can contribute to an immediate sense of grievance on the part of whistleblowers, and breakdown in trust with management, constituting real or perceived detrimental action.

In line with obligations to ensure a safe workplace, case study agencies widely agreed that when confidentiality expired or was impossible, agencies needed to develop clearer capacity to intervene in workplaces to mitigate the risks of detrimental action (for example, by directly raising with supervisors or work units that reprisals would be frowned upon). This was seen as a different approach to many current arrangements whereby, even though everybody knows about the report, no one says anything.

Equivalent active intervention may sometimes be needed to advise complainants or others about what action management, notwithstanding fear of compromising the privacy and confidentiality of persons about whom allegations are made; and other actions to communicate what is happening in the organisation, to ensure that reporters do not wrongly interpret particular management actions as reprisals, and that others properly understand the pressures upon participants in a whistleblowing process.

Involvement of line managers in support

A further corollary of the above approach, is that arrangements need to be in place to ensure that supervisors or alternative managers are directly engaged in support strategy and related workplace decisions, to the maximum extent possible in each case. This applies wherever confidentiality and investigation requirements permit, and where there is no conflict of interest in the provision of support (for example, where the employee's supervisor is implicated in wrongdoing or inaction), in which case, an alternative line of management supervision should be established.

A number of managers interviewed confirmed the view that having professional counsellors, particularly external counsellors, involved in support should not relieve line managers of their duty to support and protect their staff. One manager said:

I don't think we protect our employees particularly well at all and we don't really have line managers or HR managers that know how to do that protective function particularly well or in form employees of how that works. And so I think often, reprisals still occur because line managers, particularly, don't know how to protect staff.

Another manager bluntly observed that unless positive arrangements are put in place to include line managers in the support strategy (where this is possible), most supervisors will

willingly take the risk-averse course of assuming that their responsibility for the employee has ceased:

I use the word abrogation and I've used it in a couple of reports; I do think that (they) abrogate their managerial responsibilities to the EEO officer or to the probity and ethics officer or personnel or whoever else they can offload it.

A number of issues were identified as needing to be resolved to ensure that managers played their appropriate role in the support strategy. One issue was clarification of confidentiality, as dealt with in the sample procedures below. Some noted that confidentiality in itself could create problems in providing the necessary level of support. Revealing identity for the purposes of arranging support would be one area where the consent of the reporter is essential. As one case handler said:

Because you're not actually informed of the complainant, you can't really offer any support without then disclosing the fact that you know (who the complainant is), so you can't do anything. So to me, any support for a protected disclosure must come from the internal ombudsman's office....

Another identified issue was training; and support for managers themselves, to help them avoid risks of being seen to favour one or other side (partisanship) in workplace conflicts. One particular manager pointed out that there was a fine line and that line managers needed training and experience so as to be able to provide support without prejudging the case and treating the reporter either with such suspicion, or such approval, that their direct involvement exacerbated risks of conflict.

While no casehandlers or managers opposed the use of trained counselors and other additional support persons, many were critical of managerial colleagues who used such structures to avoid taking direct responsibility for the support or protection of reporters.

Expertise in responding to reprisals

As reported in the last section, very few organisations have effective processes for identifying threats of reprisals through an effective risk management process. Overall, agencies also do not deal well with reprisals or other detrimental action when alleged. A major reason may be that detrimental action is often sourced to management itself, as demonstrated in the first report.

In the survey of agency procedures, agencies were asked whether the agency had:

- any formal procedures and policies for responding to reprisals against employees who had reported wrongdoing (q37). 45.1 per cent said yes, 52 per cent said no and 3 per cent did not respond (N=304); and
- staff responsible for ensuring that staff who reported wrongdoing are protected from reprisals (q38). 29.3 per cent said no, 30.6 per cent nominated investigations staff, 20.4 per cent nominated support staff, 32.6 per cent nominated the employees' supervisor or line manager and 24 per cent nominated some other sort of support (N=294, agencies were able to nominate more than one source of support).

The analysis of procedures in Chapter 10 of the first report (Roberts, 2008) showed that the elements of procedures that dealt with support and protection of reporters were the least likely to be present. Table 4.12 indicates where these items ranked in the scale of

comprehensiveness. It shows that, with some exceptions, most organisations surveyed were expressing a commitment to protect and respect but lacking in the procedural elements to respond to reprisal risk effectively.

Table 4.12. Procedure items relating to reprisals

Evaluation item	Rank
A statement of the agency's commitment to protect and respect internal witnesses	9
A description of the procedures for the active management and support of internal witnesses	17
A description of the formal procedures for responding to reprisal action against internal witnesses	20
A description of the rights of the internal witness to request positive action by the entity to protect them.	22
A description of the formal procedures for the investigation of reprisal action against internal witnesses	23
A description of the procedures for the assessment of risk of reprisal against individual whistleblowers	24

In case study agencies, on average, casehandlers and managers considered that employees in their agency frequently experienced problems as a result of reporting. They also did not feel that their organisations dealt well with allegations of reprisal – as shown in Table 4.13:

Table 4.13. General views of managers and casehandlers

Issue	Case-handlers			Managers		
	Mean	SD	N	Mean	SD	N
Frequency of reporters experiencing problems from reporting (1=never, 5= always)	3.62	.81639	335	3.43	.74314	529
How well organisation deals with allegations of reprisals (1=not at all well, 5= extremely well)	2.89	.98606	331	3.03	.90349	510

Managing the internal reporting of wrongdoing survey q31,34,35,36

One of the key difficulties in the management of reprisals is separating out what is reasonable management action from what the complainant may consider to be some form of reprisal. In some circumstances what are in fact reprisals, are presented as being reasonable action by management. In other circumstances, detrimental action may be taken in relation to an employee (e.g. in a later workplace restructuring) without the full impacts of the decision upon the employee being understood by management.

The workshop of case study agency representatives noted a number of issues including:

- the linkage between performance issues and whistleblowing. It was observed that sometimes non-performing staff were left to continue on their course without any action being taken to point out to them that their performance was below standard. When there is a change in management, or some other trigger, then action to increase performance can trigger a disclosure- which could be totally or partially designated as public interest.

When an organisation finds itself in that situation, it either has to rely upon prior documentation to verify poor performance or that the staff member was performing below standard and to demonstrate that the action management is taking would be done to anybody working whose work performance was the same. In other words, the management of reprisals is one aspect of the good management of staff; and

- there can be an interaction between bullying and poor performance. The complainant will feel that the bullying has caused the poor performance when the management perspective is that action was being taken to deal with poor performance. (An added complexity is that management action to deal with poor performance could be interpreted as bullying).

The workshop observed that the current procedures in their agencies tend to lead towards a lack of action for dealing with reprisals. Often the subject of an allegation is perceived as being dealt with by positive management action and the lack of action (rather than punitive action) actually disadvantages the reporter in the long term.

It was noted that deterring reprisals through legislation may be an insufficient approach to managing problems in the workplace. The workshop of representatives from case study agencies observed that, in some circumstances, the pursuit of reprisal offences could be a waste of effort and a much more positive approach would be towards ensuring that line managers fulfill their duty of care to the employees by preventing and addressing conflict.

Where formal suspicions or allegations of detrimental action arise, many study participants confirmed that an adequate investigative approach is often not undertaken – either because burdens of proof are too high, managerial actions are already too centrally implicated in what has occurred for an internal investigator to easily unpack the events, or because there is no-one sufficiently detached to fulfil the first criterion for an investigation of reprisal (complete independence from all action that has previously taken place).

As shown in chapters 5 and 6 of the first report, allegations of mistreatment are frequently associated with a lack of substantiation of the original disclosure. While in some cases this may be because an employee is dissatisfied with the outcome, in others it almost certainly indicates that without vindication, an employee is or perceives themselves to be 'fair game' for detrimental action. In such circumstances, whistleblowers often also have a predictably reduced level of trust in internal investigators to also resolve any reprisal allegations.

Investigators of detrimental action also require the skills, and authority, to determine the essential facts of inherently complex allegations and counter allegations, to have a sophisticated understanding of how organisations operate at a senior level, and to be able to make reasoned assessments of when an organisation may have fallen down in its responsibilities to prevent or contain workplace problems, even if specific, deliberate reprisal action cannot be proved or is not in issue.

The first report concluded that more detailed and flexible agency procedures for reprisal investigations were a priority (p.309). It was also suggested to the project team that where allegations of detrimental action arise involving senior managers, special arrangements are needed to engage independent investigators, such a senior retired officer familiar with the organisation and its processes. Independent integrity agencies also need to take a more prominent, early role in the investigation of detrimental action than currently occurs.

Making it right: compensation and restitution

The research established the need for flexible mechanisms for compensation or restitution where there is failure to provide adequate support, or to prevent or contain foreseeable adverse outcomes. Agencies need to find new processes for recognising the detriment that reporters can suffer as a result of reporting wrongdoing. This issue is also a priority for legislative reform in all Australian jurisdictions, as discussed in chapter 11 of the first report (pp.271-277).

At an organisational level, the workshops of representatives from the case study agencies explored the usefulness of formal apologies to employees, or former employees, who had reported wrongdoing and had suffered adverse effects as a result of that reporting. Some representatives indicated that, in particular circumstances, a formal apology from the CEO played an important part in putting the difficult situation faced by reporters behind them. However, there was some scepticism that formal apologies were appropriate in every case and some representatives reported that even though a formal apology had been made there was not necessarily closure for reporters.

In addition to apologies, it was widely acknowledged that management failure to protect or support internal witnesses should be actioned through disciplinary measures, and in organisational assessments of the relevant managers' fitness to retain supervisory responsibilities. At least two case study agencies that ranked highly in the comparative analyses, reported circumstances where formal allegations of detrimental action had either not been made or not substantiated, but managers who had failed to provide appropriate support had nevertheless been transferred out of their preferred managerial roles.

A final issue concerns compensation by way of adjustments in career path, favourable transfers or access to allowances, or financial compensation for psychological damage and/or damage to career prospects. No jurisdictions have well-developed systems for awarding such forms of compensation to whistleblowers through existing grievance, workers' compensation or equality of opportunity processes. Until such systems are better developed, individual agencies need to consider their own options for bypassing or fast-tracking formal systems in order to facilitate compensation in deserving cases.

4.4. Exit and follow-up strategy

Checklist items:

- Exit strategies for concluding organised support to whistleblowers
- Follow-up monitoring of whistleblower welfare, as part of regular evaluation of program and to identify ongoing, unreported support needs

Exit strategies for finalising whistleblowing cases

In the survey of agency practices and procedures, agencies were asked whether they had a formal exit or closure procedure for internal witnesses when they receive ceased to receive active management support. Of those agencies with some form of procedures for identifying internal witnesses who may need active management support, 65.6 per cent said they did not have exit procedures (N=160). 12.5 per cent said that they conducted formal exit interviews,

19.4 per cent said that they sent a formal letter to internal witnesses and another 14.4 per cent said that they had some other sort of procedure. When asked to describe these other procedures, participating agencies most commonly responded that they had informal processes which were undertaken on an ad hoc basis. (Agencies were able to nominate more than one procedure).

When internal witnesses were asked about the procedures that were used to mark the end of their involvement in the whistleblowing processes, 35.2 per cent of reporters said no procedure was utilised, 4.7 per cent met with a manager, 7.9 per cent received a formal letter or communication, and 13.8 per cent nominated some other procedure (N=253, Internal witness survey, q 58). Whether or not organisational exit procedures are in place, such a response would indicate that they are not being fully utilized.

The purpose of exit procedures is to facilitate closure for reporters and to enable them to get back to being fully productive members of the organisation. When internal witnesses were asked about whether the whistleblowing experience was behind them, 37.5 per cent said the matter is still very much with them, 11.6 per cent said the matter is partly behind them, but still have issues to deal with, 24.6 per cent said the matter is almost completely behind them, but still have issues to deal with and 26.3 per cent said the matter is completely behind them (N=253, Internal witness survey, q 59).

Interviews with internal witnesses indicated that while some had got on with their lives, many were struggling to put the whistleblowing experience behind them. One said:

I feel like there's still no closure with the whole thing. But it's a huge toll to myself. My health has never been more – I've had to take time off. My wife had to take time off. We've been sick and if you look at our records we've never been sick up until four or five years ago when all of this happened. It's obviously affected my work as well but we're still trying to work as hard as we can at that school.

Another said:

And it's many years now down the track, and I still get into the car and weep, driving through traffic, at the injustice of it.

Asking internal witnesses about closure often brought out the bitterness, helplessness and frustration they felt:

Interviewer: Has there been any closure?

Internal witness: Oh absolutely not. ... There is no closure ever when dishonest people get away with their corrupt conduct and the very bodies which are there to protect our society and keep us going ... are incredibly corrupt. When those bodies don't do their job there is never any closure.

Managers and case handlers indicated empathy for those who could not put the matter behind them. One case handler said, with obvious sympathy:

I don't know that anybody actually does get closure from it. I think they're pretty much scarred and it does scar. It absolutely does scar and I think that in all future dealings they'd be that experience in mind in the way they tackle problems, or if they had to do the whole thing all over again they'll say, you know what, I won't. So yes, I think that will be their ongoing (issue) and I don't know that the mechanisms in place deal with no closure at all.

Table 4.14. Value of exit and closure procedures

Issue	Case-handlers			Managers		
	Mean	SD	N	Mean	SD	N
Value of exit or closure procedures to reporter (1=not at all valuable, 5= extremely valuable)	3.71	.97389	98	3.68	.83068	145
Value of exit or closure procedures to organisation (1=not at all valuable, 5= extremely valuable)	3.69	.95689	98	3.60	.85310	145
Proportion of reporters able to put the matter behind them (1=none or almost none, 5= all or almost all)	3.15	1.30428	319	3.07	1.33016	487.

Managing the internal reporting of wrongdoing survey q53,54, 55

The table above nevertheless indicates that both managers and case handlers recognise the importance of closure and exit procedures for signalling the end of the reporting process, and marking the point at which support moves from an active to a monitoring phase.

Ongoing monitoring of the welfare of internal witnesses

In the agency survey, only 18 per cent of all agencies (35 per cent of agencies with internal witness support procedures, n=156) indicated that they undertook follow-up or monitoring of the welfare of internal witnesses after they have ceased to receive active management support. These agencies were asked to briefly describe the follow-up or monitoring that they undertook. The most commonly mentioned were external watchdog agencies, unions and external counselling services. Very few organisations nominated that they used internal resources to monitor the well-being of internal witnesses.

In the workshops of representatives of the case study agencies, there were opinions expressed that some internal witnesses may not wish to be continually reminded of a difficult and unpleasant episode in their careers and would prefer to get on with their everyday work. A number of case study agencies indicated that they considered it was a preferable approach for internal witnesses to be given an open ended assurance of assistance and then for the internal witness to raise it with the organisation (usually a central whistleblowing support unit) if any assistance is required.

One of the issues raised in those workshops was that problems can occur for internal witnesses long after the report is made. This may be either direct (for example, where a report of wrongdoing results in a person involved in the wrongdoing returning to the workplace after a period of absence) or indirect (for example, long term drift in a whistleblower's career due to the desire to avoid stress and conflict).

Study participants tended to the view that ongoing monitoring, rather than interventionist follow-up, was preferred. Given the proportion of reporters who suffer adverse consequences, and the subtlety of those consequences, organisations do have an active responsibility to monitor the medium to long term outcomes for whistleblowers. Organisations should regularly engage in the follow-up monitoring of whistleblower welfare, as part of the regular evaluation of their program and identify any ongoing needs.

Sample content for policies & procedures

Organisational support

This organisation undertakes to appropriately protect the, dignity, wellbeing, career interests and good name of all persons involved when a report of wrongdoing is made. This includes providing necessary support to you.

This organisation has a designated senior officer as Support Officer and who is responsible for coordinating action to support persons who are suffering any form of detriment as a result of making a report of wrongdoing. The Support Officer is:

(description and contact details)

The Support Officer is separate from the investigator (s). The role of the Support Officer is to:

- Provide moral and emotional support;
- Provide career advice to the internal witness;
- Where the Support Officer forms the view that professional counseling is desirable, arrange for the organisation to provide that counseling;
- Generate support for the internal witness in their work unit (if appropriate);
- Be alert to possible victimization or harassment of internal witnesses and report any suspicions to the senior officer responsible for coordinating action to protect persons who are suffering reprisals; and
- Maintain contact with all identified internal witnesses in the organisation, monitor their progress and at the point where the Support Officer considers that an internal witness no longer needs assistance, negotiate with the internal witness, and the relevant supervisor, a formal exit from the protection and support program.

If you feel that you may need support as a result of reporting wrongdoing, you are encouraged to contact the Support Officer.

All managers in the organisation are under an obligation to notify to the Support Officer if they any staff member suffering any detriment as a result of reporting a wrongdoing.

The organisation is committed to ensuring that no disciplinary action or adverse personnel actions, or workplace reprisals including by managers, occurs as a result of the disclosures that you have made.

Investigating reprisals

If you report that you believe that you have suffered some adverse effect as a result of your initial report, the organisation will formally log your concerns. Your report on possible reprisals will be reviewed by an officer within the organisation who has not been involved in either the initial report and who is not part of the organisational where you work. If that officer determines that some reprisal action has been taken, the organisation will undertake a formal investigation of the reprisal action and act upon its findings.

Feedback

If you have made a report of wrongdoing or have reported any reprisal action, the organisation undertakes to keep you informed of the outcome.

Within 90 days of your disclosure, you will be informed of the action taken, or proposed to be taken, as a result of your disclosure. The notification will contain information about the action that has been taken, or is proposed to be taken. The notification will also contain a statement of the reasons for the decision made or action taken, or proposed to be taken.

If the action has not been finalized within 90 days, you will be informed when the proposed action is completed.

Your notification will not contain any information likely to adversely affect any person's safety or their personal privacy.

Other issues

Once you have made your report of wrongdoing, you will be provided with advice and assistance on the investigation process. You will also be provided with advice and assistance on the resources available within the organisation to handle any concerns that you may have arising from the process of reporting wrongdoing. To access this please contact your nominated Support Officer.

You will be given access to any necessary professional support services like to stress management, counseling services, legal advice, or career advice which may become necessary as a result of the reporting process. To access this please contact your nominated Support Officer.

You will be provided with information and advice regarding external regulatory or integrity agencies that you can access for support if you consider that you need support outside this organisation.

5. An integrated organisational approach

Why is an integrated approach so important?

As outlined through the previous sections, the three major objectives of a whistleblowing program are to encourage employee reporting of wrongdoing; ensure effective assessment, investigation and action; and support and protect whistle blowers. While this must be underpinned by organisational commitment to the program, described in section 1, the research has also confirmed the lessons from the previous sections, that clear and sometimes hard decisions are needed to operationalise an effective approach.

One case study agency casehandler put it simply:

It's not about what they're doing right and wrong. It's a whole department approach, and it is about having the money and strategies in place to be able to provide that support.

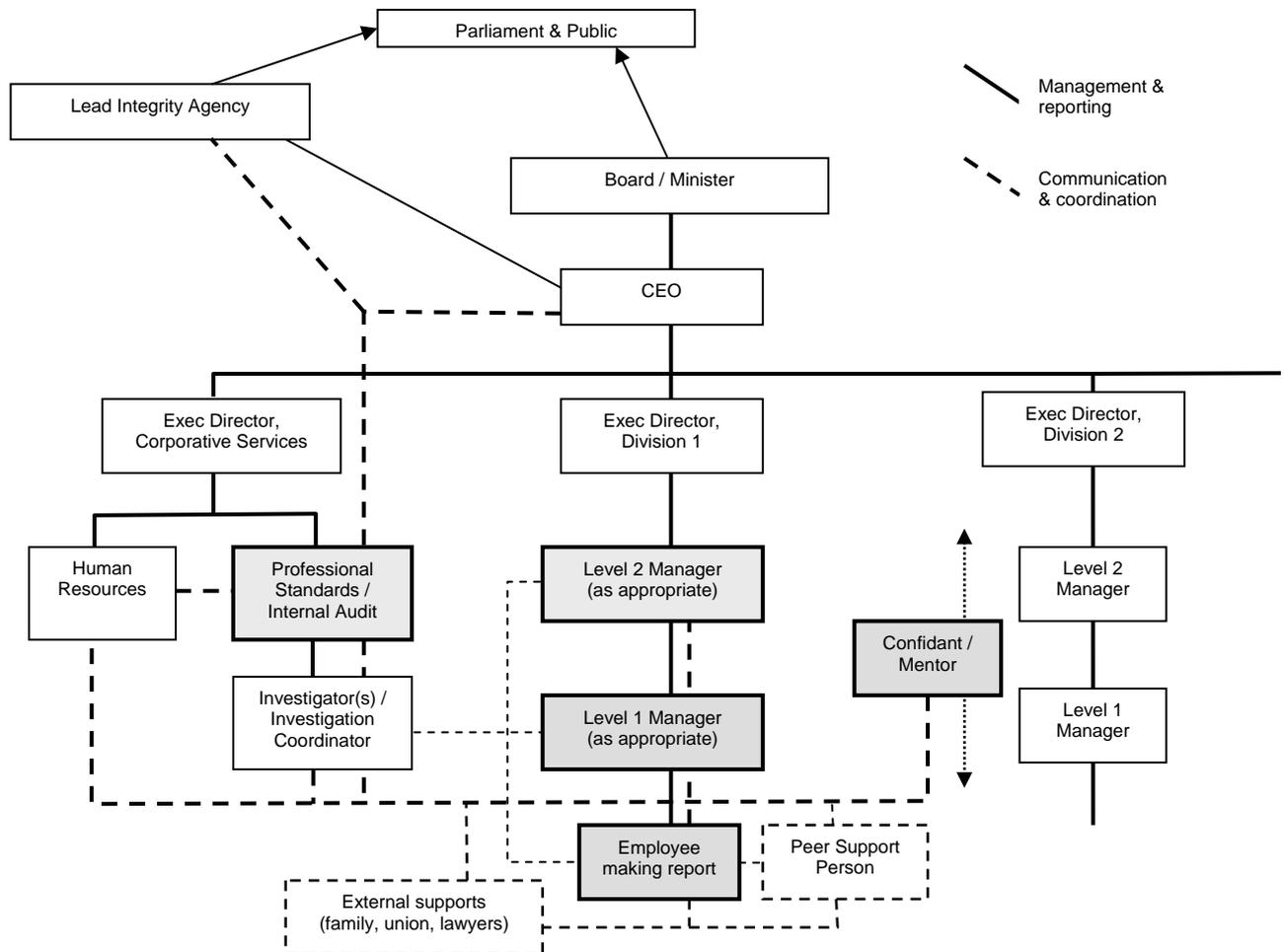
Organisational commitment to the program must move beyond procedures setting out the responsibilities and obligations that must be fulfilled by staff, to an approach which also emphasises the responsibilities of the organisation as a whole, including the most senior management. Examples of an integrated approach to embedding the program in everyday actions include:

- Explicit observations by management that reporting wrongdoing is in line with the organisation's ethical culture (as expressed in the code of conduct, or equivalent mechanism) as well as being in accordance with the expectations of government and the Australian people;
- all levels of management setting a personal example by supporting staff who come forward with reports of wrongdoing and 'owning' the report;
- with their consent, publicly acknowledging particular staff who have come forward with reports of wrongdoing that have been found to be accurate;
- building an understanding of whistleblowing processes through formal training mechanisms; and
- linking the treatment of staff who come forward with reports of wrongdoings to the assessment of the competence of managers.

The research into the case study agencies confirmed the value, on the whole, of more organised and proactive programs, in terms of measurable results. The following elements are intended to help ensure that the many complex issues involved in embedding a whistleblowing program in the organisation are addressed in a holistic fashion.

Figure 5.2. 'Devolved program'

This model does not include a permanently staffed internal witness support unit, but assumes that coordination will be provided by the professional standards area. This model is similar to one found in a mid-sized agency. The solid box around the 'confidant' indicates a more intensive and structured role.



A **'case by case program'** involves similar actors but presumes that all involved, including a confidant, will be appointed on an as-needs basis rather than being part of an existing program. It is the default choice for small agencies.

The typical roles of a 'confidant' and a 'peer support' person were described in section 4.1. Other features of communication and reporting implicit in any of the programs are mentioned below. All three models presume a sharing of support responsibilities across various parts of the organisation, as well as external lines of communication which are likely to become more significant and direct, the less formal the program.

Each model requires resource commitments, including for additional costs such as external counseling support on as needs basis, although the case-by-case model presumes that appropriate skills and responsibilities are held by generic staff (e.g. human resource managers, or an internal investigation unit) rather than dedicated staff.

Agencies can determine for themselves which program, and scale of program is commensurate with their needs depending on their caseload. The key lesson from the first

report, discussed in section 4.1, is the need to design a proactive support program that is management-initiated, based on a comprehensive system for tracking reports at all levels of the organisation so that all employees who report or provide information in relation to wrongdoing are quickly identified, and assessment made as to their need for support.

Agencies need to determine a target caseload for anticipated delivery of support, based on reliable evidence of reporting patterns within their organisation. As previously reported, in the case study agencies only perhaps 1.3 per cent of all public interest whistleblowing cases were tracked as receiving organised support at the time of the research. This is despite the fact that across the case study agencies, on average 20 per cent of whistleblowers went on to report having been treated badly by management or colleagues – giving an estimate in the order of 7,700 individuals. While the estimated size of the ‘at risk’ population can be further refined in various ways, on any analysis the gap between the number of employees provided with organised support, and the likely number of whistleblowers in need was very large.

For the purposes of estimating target need, agencies can use empirical research such as that involved with this research to identify the number of employees believed to be reporting wrongdoing, as well as the proportion currently experiencing negative outcomes. As a rough estimate, for example, 12 per cent of all employees in an average agency were shown as having reported public interest wrongdoing over a two year period, and on average 22-25 per cent of those perceived themselves as having been mistreated.

If current levels of organised support were increased from less than 2 per cent of reporters to 10 per cent, and targeted onto the highest risk cases as identified through a risk management approach, then the prospects of significantly reducing the proportion of aggrieved whistleblowers should be reasonably high. For an agency of 10,000 employees, this estimate would amount to 120 employees over the two year period.

The key lesson from the research is not that there is any final scale. Rather the important element is that agencies need to both estimate the size of the at-risk population they wish to support, and make a clear choice as to which model they are going to develop to provide that support, to allow appropriate costings and staffing decisions.

Clear understanding of roles and responsibilities

Many of the elements of a whistleblowing program discussed in the previous sections involve relationships that cut across normal organisational lines, and involve a wide range of individuals. It is important that these be clearly articulated in written procedures and explanatory materials, and reflected in formal position statements.

Figure 5.3 sets out one overview of how key responsibilities might be distributed across the organisation and external actors, for example in an agency using a 'case by case' approach to support. The fact that a 'case by case' approach is chosen does not mean that responsibilities are only worked out when a case arises. Rather the responsibilities should be understood and defined in anticipation of the next case.

The sample procedures provide some further guidance on methods for stating the roles and responsibilities of different individuals in such a context.

Figure 5.3. Key responsibilities for positive reporting climate**Table 1: Key ingredients of a positive reporting climate**

Ingredient	Employee statement	Key responsibilities				
		Junior management	Middle management	Internal investigators	Senior management	Law/policy/CMC
1 Obligation to report	'It's my job to report my concerns.'	x	x		x	X
2 Clear understanding of internal witness roles	'I can report without getting tagged as a troublemaker.'		x	x		X
3 Good internal investigation systems	'I can trust the agency to investigate this quickly, fairly and accurately.'		x	X	x	x
4 Internal witness support strategies	'My managers will take steps to see I don't suffer unnecessarily.'	x	X	x	x	x
5 Responsiveness to reprisals	'If anyone undertook a reprisal, they'd be in trouble.'		x	X		x
6 Recognition	'The agency will thank me in the end.'		X		x	

X indicates where primary responsibility for this issue lies at the present time.

x indicates where key additional/supplementary responsibilities lie.

Source: Brown 2004

5.2. Separation of investigation and support functions

Checklist items:

- Operational separation of functions
- Clear authority for support personnel to involve higher authorities (CEO, audit committee and external agencies) in whistleblower management decisions

Separation of investigation and support functions

The common experience of the case study agencies, especially those with standing support programs, is that the organisational approach should recognise the incompatibility of the same individuals trying to investigate disclosures or alleged detrimental action in relation to a whistleblower, and seeking to provide them with support.

Some evidence of the rationale for this principle is found in Table 4.3 in the previous section, dealing with sources of internal witness support. It was notable that 'internal investigation' units ranked as a significant source of whistleblower support, but that their value tended to decrease when things became difficult. This result follows the logical reality that in many instances, while investigators may be highly sympathetic and a source of crucial advice to whistleblowers, they may not be able to substantiate the allegation or arrive at a conclusion which the whistleblower supports. Further their responsibility is to move on to the next investigation or other duty, rather than provide ongoing support.

This separation of functions is easiest to achieve in a standing program, where a permanent internal witness support unit can work with, but be kept institutionally separate from an internal investigation unit. Ensuring separation of functions becomes more complex where resources limit the location of whistleblower coordination staff to the same unit that performs other organisational integrity functions, or require a 'case by case' model. In these circumstances, the same principle needs to be observed to the maximum extent possible in an alternative form.

Reporting lines of support personnel

Figures 5.1 and 5.2 emphasise that it is important that support personnel have clear and direct lines of reporting to whichever organisational levels are necessary to influence management decisions relevant to a whistleblower's welfare. This may include the need to recommend that action be stopped, or initiated. Similarly support personnel need to have free authority to contact external agencies to ensure effective oversight of the organisation's handling of a case, where this may be required.

This 'access to the top' is likely to be particularly important in devolved or case-by-case programs, where practical support lies more heavily on a designated confidant or mentor with less central institutional support. In this case, the duty of such a confidant to sound the alarm regarding reprisal risks or detriment by the agency needs to extend to an obligation to get involved in management decisions for which they have no normal responsibility.

Similarly, this 'access to the top' outside normal reporting lines may be very important where normal organisational policies need to be bypassed or subverted in order to secure timely action conducive to a whistleblower's welfare, such as a desired transfer, additional leave, relocation or other action.

5.3. Shared responsibility for whistleblower support

Checklist items:

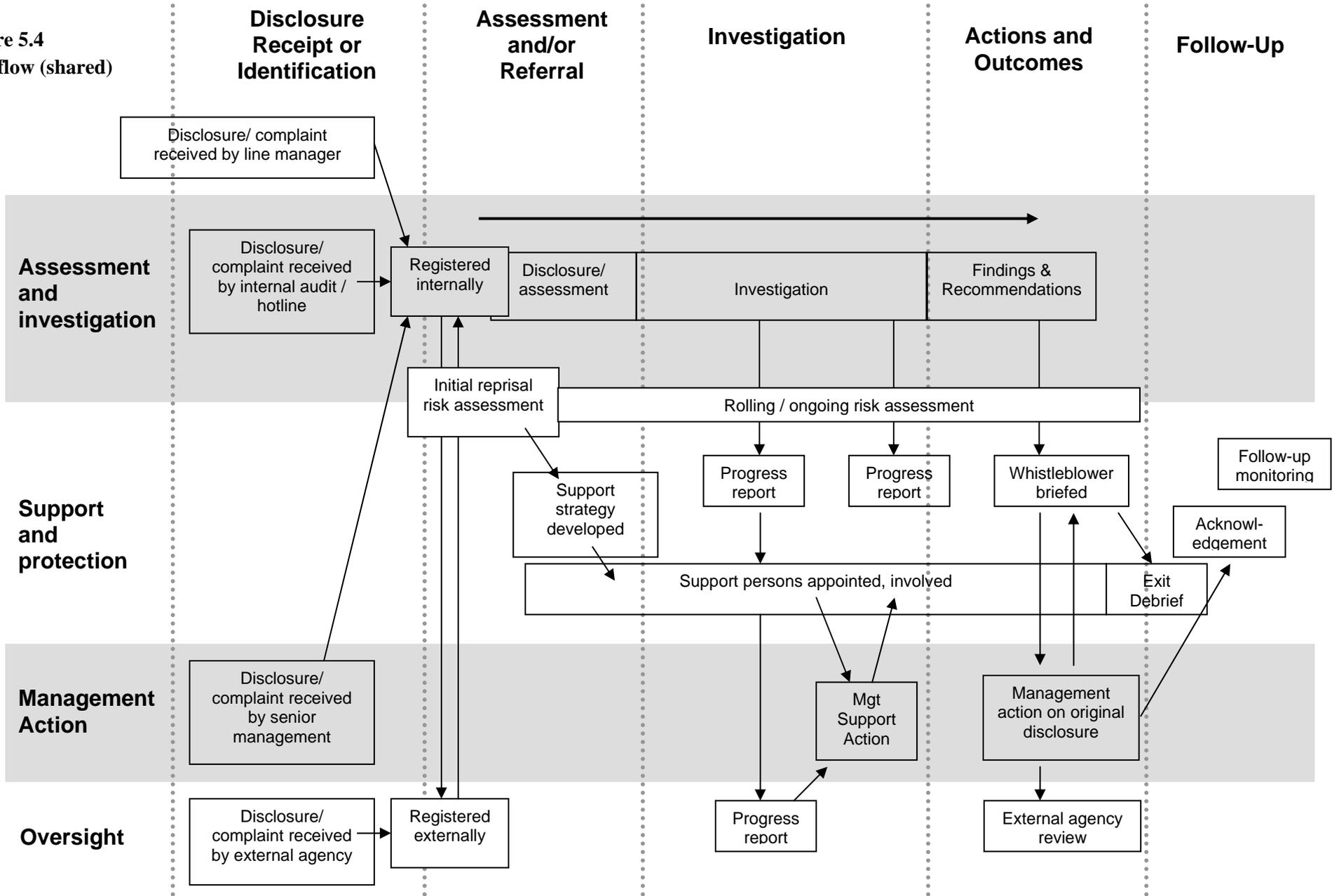
- Clear lines of communication to ensure manager(s) retain responsibility for their workplace and workers to maximum extent possible
- Clear lines of communication with external agencies re: incidence, nature and status of active cases

These items reinforce the conclusions in section 4 that responsibility for employee welfare, while not being left entirely to an employee's normal line management chain, should nevertheless remain with an employee's normal supervisors to the maximum possible extent, unless circumstances positively require other arrangements.

However as part of the necessary sharing of responsibility, the evidence regarding the frequent inability of agencies to resolve reprisal allegations means that integrity agencies also need to be systematically included in the information flow, and where necessary decisions, regarding the management of whistleblowing cases.

Figure 5.4 outlines some of the shared responsibilities involved in a typical case, drawing on the case management flow diagrams of a number of agencies.

Figure 5.4
Caseflow (shared)



5.4. Embedded policies and procedures

Checklist items:

- Integrated/coordinated procedures (not 'layered' or 'alternative')
- Integrated complaint/incident recording and management systems
- Whistleblower support integrated into human resources, career development, workplace health & safety (WH&S) policies.

These items reinforce the elements in section 1.2 regarding organisational procedures, section 3.1 regarding integrated disclosure tracking and assessment systems, and sections 4.1 and 4.3 regarding the integration of whistleblower support into other policies dealing with organisational wellbeing and employee welfare.

Section 1.2 noted the tendency for organisations to develop their whistleblowing program as a new 'add on' or layer placed over the top of existing procedures. Often these procedures are developed at different times (for example, first procedures on the code of conduct, then another for fraud and criminal investigations, then others for other investigations).

Such procedures should be integrated into a simple, consolidated set of procedures relating to organisational accountability, integrity and casehandling. Unless this approach is taken, there remains a risk that whistleblowing policies will simply be ignored, for example, through the use of alternative procedures to investigate wrongdoing rather than triggering the protection requirements central to whistleblowing responsibilities. A number of agencies cited the use of alternative 'tags' and investigation paths for disclosures, as alternatives to acknowledging them as public interest disclosures under whistleblowing legislation.

A similar risk attaches to the multiple types of wrongdoing into which a whistleblowing disclosure could be rightly or wrongly classified or divided, calling it to go unregistered on agency systems or to fall off the radar.

The final item relates to the need to firmly link organisational responses to whistleblowing to the responsibility of public employers to provide their staff with safe, healthy workplaces, free of wrongdoing and of detrimental action, in the interests of a professional public sector and a climate of continuing high job satisfaction and equality of employment opportunity for employees who speak up about possible wrongdoing.

Sample content for policies & procedures

Roles and responsibilities

Roles and responsibilities of the **executive**.

The members of the executive of the organisation are responsible and accountable for:

- Leading by example to create an organisational culture that gives a clear message that making reports of wrongdoing are encouraged and valued and corruption, maladministration and serious and substantial waste is not acceptable;

- Ensuring that strategies to prevent corruption, maladministration and serious and substantial waste are included in the organisational business plan to ensure they are treated as an integral part of work activities;
- Ensuring that a protected disclosures procedures for reporting wrongdoing, including reporting channels, is in place and evaluated on a regular basis;
- Ensuring that all public officials involved in conducting investigations understand the principles of the relevant legislation, in particular confidentiality;
- Ensuring that internal disclosures are addressed quickly and effectively;
- Taking all reasonable steps to ensure that public officials who make disclosures are not subject to reprisals or any form of detrimental action;
- Ensuring the rights of those who are the subject of a report of wrongdoing are protected;
- Ensuring public officials have access to information on the relevant legislation, and reporting channels in the organisation;
- Implementing organisational change necessary as a result of a disclosure;
- Reporting offences to the appropriate investigating authorities, particularly that any criminal offence should be reported to the Police Service;
- Initiating investigations following a disclosure, as well as any disciplinary or corrective action required;
- Supporting staff who make reports of wrongdoing; and
- Referring to relevant internal procedures for reporting.

Roles and responsibilities of **managers, supervisors and team leaders**

Managers, supervisors and team leaders are responsible and accountable for:

- Leading by example to contribute to an organisational culture that gives a clear message that making disclosures is encouraged and valued and corruption, maladministration and serious and substantial waste is not acceptable;
- Ensuring that a public official making a report of wrongdoing is not subject to reprisals or any form of detrimental action;
- Establishing clear lines of authority and accountability;
- Ensuring all public officials have access to information on the reporting channels for corruption, maladministration and serious and substantial waste;
- Implementing staff awareness and training; and
- Implementing system improvements and strategies if a report of wrongdoing relates to their particular area of control.

Roles and responsibilities of **staff members**

All staff members are responsible and accountable for;

- Reporting matters where there is evidence that shows or tends to show corruption, maladministration and serious and substantial waste; and
- All staff members have a role in ensuring the success of the relevant legislation within their workplace; and
- Identifying areas where opportunities for corruption, maladministration and serious and substantial waste may occur and/or management systems are inadequate.
- Additionally, all staff members play an important role in supporting those who have made reports of wrongdoing.

Part 3.

Resources

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