Summary

1. Introduction

The Whistling While They Work project

This book presents results from a program of empirical and comparative legal research into public interest whistleblowing in Australian public sector agencies, undertaken in 2005–08 through the Australian Research Council-funded Linkage Project ‘Whistling While They Work’.

The study was the largest of its kind ever undertaken in Australia, and one of the largest per capita ever undertaken in the world. It has involved six Australian universities, a number of international collaborators and 14 partner organisations, including many Australian public integrity and public sector management agencies.

What is ‘whistleblowing’?

Whistleblowing is the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to people or organisations that might be able to effect action.

In this book, whistleblowing is also taken to mean disclosures by organisation members of matters of ‘public interest’—that is, suspected or alleged wrongdoing that affects more than the personal or private interests of the person making the disclosure.

The research encompasses internal whistleblowing, whistleblowing to regulatory or integrity agencies and public whistleblowing.

What is ‘wrongdoing’?

A wide definitional approach was taken in the research in order to better differentiate between different types of perceived wrongdoing (including public and private interest) and to be consistent with the need to encourage an ‘if in doubt, report’ approach to workplace problems. The project surveys offered a list of 38 different behaviours covering a wide spectrum of wrongdoing types, grouped into seven categories for the purpose of analysis:

• misconduct for material gain
• conflict of interest
• improper or unprofessional behaviour
• defective administration
• waste or mismanagement of resources
• perverting justice or accountability
• personnel or workplace grievances.
In this book, public interest whistleblowing refers to the data from respondents who indicated they reported wrongdoing in the first six of these seven categories.

**Methods and limitations**
The empirical research involved Commonwealth, NSW, Queensland and West Australian public agencies.

The major employee survey captured evidence from 7663 public officials from 118 public agencies across these jurisdictions.

Other agency, internal witness, case-handler and manager surveys captured evidence from larger and smaller groups of agencies, including 15 ‘case study’ agencies, also from these jurisdictions.

The bulk of the data reflect the experience of individuals who are still public sector employees, rather than those who might have left the public sector as a result of their experiences.

Extensive comparative analysis was also undertaken into the relevant legislative regimes of the jurisdictions and the content and comprehensiveness of the whistleblowing procedures of public agencies. All this evidence and analysis has been drawn on to produce the lessons and key findings presented in this book.

**Continuing analysis: towards best practice**
This book represents the first of two major reports of the Whistling While They Work project.

A second report on current and prospective ‘best practice’ in agency-level systems for managing whistleblowing will also be published, involving further quantitative analysis and additional qualitative research into how whistleblowing is currently managed, based on experiences in the 15 case study agencies.

**Part 1: A new picture of public sector whistleblowing**
Part 1 presents empirical data of the experiences of a wide range of public servants across a wide range of agencies, including those who observe wrongdoing but don’t report it, and those who report it and do or don’t suffer. These chapters present an aggregate or averaged picture of the experiences of public officials. They also point to the substantial differences in outcomes depending on the circumstances in which wrongdoing is seen and whistleblowing occurs, including substantial differences in the responses of different agencies.
Chapter 2: The incidence and significance of whistleblowing

How much reporting goes on in the Australian public sector?

Reporting of wrongdoing, including public interest whistleblowing, is a more common and routine activity in the majority of Australian public sector agencies than previously understood.

In the two years before the employee survey (undertaken in 2006–07), 71 per cent of all respondents had direct evidence of at least one of the wide range of nominated examples of wrongdoing in their organisation.

Sixty-one per cent of respondents rated at least one form of perceived wrongdoing as being at least ‘somewhat serious’, while 28 per cent of respondents said they had formally reported the wrongdoing that they considered to be the most serious.

‘Whistleblowing’ as opposed to ‘reporting’

Twenty per cent of respondents were estimated as having reported the most serious wrongdoing outside their organisational role—that is, as potential ‘whistleblowers’.

In the case of 12 per cent of respondents, the reported (most serious) wrongdoing involved ‘public interest’ wrongdoing such as corruption, defective administration or waste, as opposed to personnel and workplace grievances.

Using this conservative estimate, if 12 per cent of all public servants had also reported some form of public interest wrongdoing outside their role in the two years, this estimate would equate to 197 000 public servants nationally.

How important is current whistleblowing?

Evidence from public employees who have reported wrongdoing, public employees in general and agency statistics indicates that whistleblowing is widely recognised across the public sector as being important to achieving and maintaining public integrity.

Eighty-one per cent of all employee survey respondents who had reported wrongdoing indicated that they would be either ‘very likely’ or ‘extremely likely’ to report again.

In the 15 case study agencies, respondents to a survey of managers and case-handlers rated ‘reporting by employees’ as the single or equal most important means by which wrongdoing was brought to light in their organisations.

High and low rates of reporting

At least as many public servants who have directly observed wrongdoing do not report it as currently indicate they report it.
Twenty-nine per cent of employee survey respondents who had observed wrongdoing they considered to be ‘very’ or ‘extremely serious’ did not report it or otherwise act on it (the inaction rate).

In some agencies, the inaction rate in response to perceived serious wrongdoing is less than 10 per cent of respondent employees; but in at least one agency in each jurisdiction, the inaction rate rises to more than 50 per cent. These variable results reinforce the fact that general barriers to reporting exist across the public sector and suggest that differences in approach and management culture have strong, measurable effects at the agency level.

Chapter 3: Who blows the whistle, who doesn’t and why?

Employee characteristics
Employee survey respondents who reported wrongdoing outside their role (non-role reporters—that is, potential whistleblowers) shared most of the same attitudes to their organisation, job and management as non-reporters.

Non-role reporters were slightly more likely to be female and have spent longer in their organisations than others.

There is little evidence that employees who report wrongdoing are predisposed to conflict or are likely to be disgruntled or embittered employees, driven to report by perverse personal characteristics.

Depending on the circumstances, almost any employee could be expected to speak up about wrongdoing. Similarly, depending on the circumstances, almost any employee might also remain silent.

Characteristics of the wrongdoing
Public employees’ decisions about whether to blow the whistle appear to be influenced much more strongly by their organisational context, perceptions of the seriousness of the wrongdoing and their beliefs about whether reporting the wrongdoing will serve any good purpose.

The likelihood of reporting increases when employees assess wrongdoing to be more serious and frequent, when they have direct evidence of the wrongdoing (as opposed to simply observing it) and when it affects them personally.

The likelihood of reporting decreases when these features are not present, when employees assess that the wrongdoing involves multiple participants or when the participants are at a higher organisational level than the observer.

Reasons for reporting and not reporting wrongdoing
The most important reasons nominated by employees for reporting wrongdoing, when motivated by the circumstances to do so, were confidence that action
would be taken on their report, followed by knowledge and confidence in the process they were meant to follow.

Confidence that they would be supported or protected after their report was a lesser consideration for most employees who reported, and was a less important consideration than generally believed by respondents to the case-handler and manager surveys in the case study agencies.

The main reasons for not reporting, given by respondents who did not report, were a belief that no action would be taken or a fear of reprisal, or that management would not protect them from reprisal, especially in circumstances in which the perceived wrongdoers included managers.

These results show that the best ways to ensure that staff will speak up are by demonstrating that if wrongdoing is reported, something will be done and whistleblowers will be supported.

The results also underscore the responsibility of agencies to provide safe and just processes for employees who blow the whistle, given that many do so notwithstanding logical risks of conflict or reprisal. The prospects for encouraging early and more constructive forms of reporting may well depend on management’s larger commitment to organisational justice.

Chapter 4: How do officials report? Internal and external whistleblowing

Reporting paths

The bulk of whistleblowing begins and ends as an internal process. Ninety-seven per cent of the public interest whistleblowers identified through the employee survey reported internally in their agency in the first instance. Ninety per cent of all public interest whistleblowing also ended internally within the agency.

Only 2.9 per cent of public interest whistleblowers had reported to an external agency or body in the first instance, and only 9.7 per cent of whistleblowing involved an external agency or body at any stage.

Only an extremely small proportion (less than 1 per cent) of all whistleblowers went outside official channels to the media at any stage—typically as a last resort.

Of the majority of whistleblowers who reported internally in the first instance, most also did so up the management chain (84 per cent of all whistleblowers) rather than through specialist internal units or processes (less than 10 per cent).

Of the 138 whistleblowers surveyed in more depth in the case study agencies (internal witness survey), 80 per cent still chose to report internally in the first instance and, for 70 per cent, their whistleblowing remained internal.
When do whistleblowers choose internal or external paths?

Internal and external whistleblowers indicated high levels of ‘organisational citizenship behaviour’ (OCB), further challenging the stereotype of an external whistleblower as a disgruntled, organisationally unhappy employee.

Officials who reported externally at any stage indicated higher levels of initiative and lower levels of loyalty than purely internal whistleblowers. It is possible, however, that slightly lower loyalty is simply a result of the conditions that lead an official to report externally, having first reported internally in most cases.

Overall, the results indicate that internal reporting is—and is likely to remain—the most natural reporting path for the majority of public interest whistleblowers, being the path most consistent with traditional ideals of organisational citizenship and ‘pro-social’ behaviour.

Do whistleblowers’ choices vary with trust in management?

The employee survey found higher trust in management among employees who only ever reported wrongdoing internally and lower trust in management among those who reported externally at any stage, including after having reported internally in the first instance.

These results indicate that when organisations can engender a higher level of trust, they should be able to encourage more employees to report internally, being also the first and only avenue that most public officials currently use. These results also confirm the importance of organisations’ internal disclosure procedures and increase their responsibility to manage reporting well on an internal basis.

Challenges include greater effort in training and equipping managers to handle disclosures appropriately, lifting employee awareness of and confidence in different internal and external reporting paths and a need for closer coordination between ‘line’ and integrity agencies to ensure disclosures are managed in the most appropriate way as early as possible, rather than simply waiting for whistleblower dissatisfaction to become a trigger for further, external complaints.

Chapter 5: The good, the bad and the ugly—whistleblowing outcomes

Substantive outcomes including organisational changes

In response to the employee survey, 63 per cent of public interest whistleblowers reported that their disclosure was investigated, 56 per cent of whom indicated that the investigation resulted in improved organisational outcomes.
Whistleblower satisfaction

Whistleblowers were most likely to be satisfied with the handling of their disclosure if they were kept informed and the investigation resulted in positive, substantive outcomes.

In the case study agencies, the understanding of most respondents to the manager and case-handler surveys about the issues of greatest importance in the management of whistleblowing did not align well with the expectations and understanding of most whistleblowers, even though the overall value of whistleblowing was strongly acknowledged.

Overall treatment of whistleblowers

Contrary to some stereotypes, it is not inevitable that a whistleblower will suffer mistreatment from co-workers or management as a result of reporting wrongdoing, even if reporting is frequently a difficult and stressful experience.

In response to the employee survey, 78 per cent of public interest whistleblowers said they were treated either well or the same by management and co-workers in their organisation as a result of reporting. Twenty-two per cent of whistleblowers said they were treated badly by management and/or co-workers.

On average, most public interest whistleblowers (at least 70 per cent) are treated either well or the same by management and co-workers in their organisation. While the employee survey did not sample former employees, even on an excessively pessimistic estimate of the experience of former employees, the total proportion of whistleblowers experiencing mistreatment would be unlikely to exceed 30 per cent.

Contrary to common assumptions, when whistleblowers are treated badly, this mistreatment is more likely to come from management than from colleagues or co-workers. Eighteen per cent of whistleblowers indicated that they were treated badly by management, compared with 9 per cent of whistleblowers who indicated they were treated badly by co-workers (with 5 per cent indicating they were treated badly by both).

Indications of whistleblower mistreatment vary greatly between agencies. The proportion of whistleblowers indicating bad treatment by management fell close to zero in some agencies, but in others rose up to 46 per cent.

While 90 per cent of all reporters said they were at least ‘somewhat’ likely to report again, this was true of only 59 per cent of reporters who said they were treated badly.

Deliberate mistreatment and reprisals

In the case study agencies, the internal witness survey confirmed that the bad treatment or harm suffered by whistleblowers was most likely intimidation,
harassment, heavy scrutiny of work, ostracism, unsafe or humiliating work or other workplace-based negative behaviour.

The main sources of bad treatment or harm reported by those whistleblowers who suffered were not immediate co-workers or colleagues, but managers themselves.

Results from the case-handler and manager surveys confirm the overall pattern of the most and least common types of reprisals.

Only in very rare cases is the nature of the reprisal such that it could meet the legal thresholds required to prove criminal liability on the part of any individual. These results raise questions about whether reliance on criminalisation and prosecution is a well-founded strategy for addressing the bulk of reprisal risks.

**General impacts on whistleblowers**

Even successful whistleblowers often report adverse psychological experiences (for example, increased stress) from whistleblowing, though not as adverse as those treated badly.

Based on relationships between the internal witness and employee surveys, approximately 62 per cent of all whistleblower respondents might be estimated as having suffered increased stress as a result of reporting wrongdoing (the most common form of adverse impact), with about 43 per cent of all whistleblowers estimated as suffering extreme stress.

In the case study agencies, 54 per cent of case-handler and manager respondents indicated a belief that employees who reported wrongdoing in their organisations ‘often’ or ‘always’ experienced ‘emotional, social, physical or financial’ problems as a result.

**Chapter 6: Whistleblower mistreatment—identifying the risks**

**Expectations of treatment and support**

While different employees and whistleblowers assess the risk of mistreatment differently, results from the employee survey do not suggest that mistreated whistleblowers are any more likely to be troublemakers, disgruntled employees or individuals predisposed to conflict than those treated well or the same.

Mistreated whistleblowers appear to have had higher original expectations about management support than those not mistreated, as well as lower expectations that they would be left exposed to risks. Whistleblowers also appear to usually be relatively accurate in self-assessing the reaction of co-workers to their disclosure, but less accurate in their ability to predict the likely reaction of management.
These results confirm the importance of internal disclosure systems that support employees in navigating the management response to disclosures, given the trust that employees are asked to place in management by reporting and the reality that the responses of individual managers can be adverse.

**Risk factors for mistreatment of whistleblowers**

While the proportion of all employee survey whistleblower respondents who reported mistreatment was 22 per cent, this could be much higher in whistleblowing cases in which one or more of a number of risk factors were present.

The key risk factors for reported mistreatment by co-workers are, in order of significance, any public interest whistleblowing case in which:

1. the wrongdoing is perceived as more serious
2. there is a lack of any positive outcome from an investigation
3. more than one person is involved in the alleged wrongdoing
4. the whistleblower is situated in a work group of less than 20 people.

The key risk factors for reported mistreatment by management are, in order of significance, any public interest whistleblowing case in which:

1. the investigation is not resolved internally and becomes external (although the perceived mistreatment could itself have led to the external disclosure)
2. there is a lack of any positive outcome from an investigation
3. the wrongdoing is directed at the whistleblower personally
4. some or all of the alleged wrongdoers are employed at a higher organisational level than the whistleblower
5. the wrongdoing is perceived as more serious and/or frequent.

These risk factors confirm the complexity of many whistleblowing cases and help identify the circumstances to which agencies need to be most alert and prepared to address the strongest efforts, in order to reduce or prevent mistreatment.

**Against-the-odds outcomes**

Where a ‘high-risk’ reporting case (based on the above factors) does not result in the reporter indicating mistreatment, the available evidence indicates the reporter might have been better able to escape or ride out mistreatment by co-workers because he or she was significantly older (mean of 46 years) than reporters who recorded mistreatment (mean of 40 years).

Where a ‘low-risk’ reporting case did result in the reporter indicating mistreatment, the available evidence indicates three further risk factors that could also identify the likelihood of a negative outcome:
• reports of wrongdoing that went through a larger number of internal stages before leading to positive action
• positive action was taken but not as a result of any formal investigation, or any of which the reporter was aware
• the reporter was employed on a part-time, casual or contract basis, rather than a full-time and/or permanent basis.

These results provide new guidance on the processes that public agencies can use to better assess, anticipate and thereby reduce and manage the risks of whistleblower mistreatment.

**Part 2: Managing whistleblowing—organisational systems and responses**

Part 2 shifts to analysis of the different management environments and systems within which reporting and non-reporting occur in public sector agencies. The chapters cover management attitudes, internal investigation standards, internal witness support programs, agency whistleblowing procedures and the legislative context.

**Chapter 7: Support for whistleblowing among managers—exploring job satisfaction and awareness of obligations**

**Managers, job satisfaction and support for whistleblowing**

In the employee survey, the 21 per cent of all respondents who identified as managers demonstrated even greater levels of support for whistleblowing than non-managers, measured in terms of having a favourable personal attitude towards whistleblowing.

General support for whistleblowing also increases among those managers with higher job satisfaction, which appears to be a salient facilitating factor in managers’ support for whistleblowing ‘in principle’.

Greater levels of trust in management, job satisfaction and organisational citizenship all significantly increase the probability of any employee supporting whistleblowing, as do age and education. Being a manager, however, also increased the probability of supporting whistleblowing, net of other influences.

**Managers, job satisfaction and knowledge of whistleblowing procedures**

Managers with higher job satisfaction also indicated an increased knowledge of, and confidence in, their ability to navigate whistleblowing policies.

These results suggest that the organisational benefits of having highly satisfied managers extend not only to having managers with a more favourable personal
attitude towards whistleblowing, but managers who should be able to put this attitude into practice through greater knowledge of relevant procedures.

Managers and knowledge of whistleblowing legislation
Fifty-four per cent of all employee survey respondents indicated that they did not know whether they were covered by legislation setting out their ‘rights and responsibilities associated with reporting alleged wrongdoing’ involving their organisation.

While managers were more likely than non-managers to indicate that they knew whether they and their employees were covered by relevant legislation, a large proportion of managers—40 per cent—still did not know.

Most respondents who believed they were covered by legislation also indicated that they felt they needed more information and training about it—with this perceived need being significantly higher among managers than non-managers.

These results reinforce the importance of agency systems and procedures, and senior management leadership, that build on and maximise the general support for whistleblowing that exists among individual managers—especially given the dual role that managers often play as the potential solution to, and potential source of, the problems and conflicts associated with reporting of wrongdoing.

Chapter 8: Investigations—improving practice and building capacity
Who conducts investigations?
Based on the agency, employee and case-handler and manager surveys, a wide variety of internal organisational units and individuals and external resources are used to conduct investigations in or on behalf of the agencies studied. With almost all employee disclosures made internally, the responsibility for investigating reports of alleged wrongdoing rests primarily within organisations.

In the case study agencies, most internal witnesses, case-handlers and managers tended to agree that investigations were most often well handled if undertaken by some kind of specialist unit (for example, ethical standards, internal audit unit), rather than by line managers—on whom many agencies currently rely heavily.

Public sector organisations also currently rely heavily on using their chief executive officers (CEOs) to investigate whistleblowing matters—even though, in the assessment of most case-handlers and managers, the CEO is rarely the most appropriate person to conduct investigations.

These results highlight the need for appropriate expertise in investigations, but also the need for more careful consideration of the way in which institutional
responsibilities for investigations are configured, given that not all management roles can be considered to be routinely compatible with investigation roles.

In the case study agencies, the results from the internal witness, case-handler and manager surveys also indicated that external watchdog or investigation agencies (that is, integrity agencies) did not enjoy much confidence in respect of the timeliness or effectiveness of their involvement in investigations.

These results indicate the importance and the difficulty of achieving more effective relationships between agencies and integrity agencies to help ensure that, wherever possible, the primary investigation of a disclosure is undertaken properly.

Training and qualifications of investigators

Only 26 per cent of agencies that responded to the agency survey indicated that they required or provided professional training for any staff involved in the investigation of employee-reported wrongdoing.

While 35 per cent of agencies indicated that they provided ‘informal or on-the-job’ training, the largest group of agencies—39 per cent—indicated that they did not require or provide any particular training.

In the case study agencies, 33 per cent of case-handler and manager respondents indicated that they had experienced professional training in how to deal with whistleblowing cases, while 43 per cent of respondents indicated that they had received only informal training and 24 per cent confirmed that they had no particular training.

This result was largely repeated in respect of case-handlers from internal audit, fraud, investigation and/or ethics units, 24 per cent of whom also confirmed that they had no particular training.

The amount and quality of training were shown to be positively related to case-handler and manager confidence in their ability to deal with whistleblowing reports, as well as less harsh or stereotypical views about the usefulness of whistleblowing and the feasibility of managing whistleblowing incidents to a positive outcome.

Comparing investigation practice across agencies

Based on a comparison of 12 of the case study agencies, agencies with ‘better-than-average’ investigatory capacity were more likely to have a higher proportion of employees who reported the most serious wrongdoing they observed (50 per cent) than agencies with only ‘average’ investigatory capacity (44 per cent).

In agencies with better-than-average investigatory capacity, employees who had reported wrongdoing were also significantly more likely to indicate that
they would be likely to report again (mean = 4.22) than equivalent employees in agencies with only average investigatory capacity (mean = 4.01).

These findings reinforce the crucial importance of good investigation practice and capacity to the process of realising the benefits of whistleblowing, and indicate that the conduct and management of internal investigations represent a major, continuing challenge for public sector agencies.

Chapter 9: Internal witness support— the unmet challenge

Internal witness support programs

All the surveys indicate that organised systems for supporting and protecting internal witnesses are in relative infancy. Only 54 per cent of all agencies that responded to the agency survey had procedures for identifying internal witnesses in need of active management support and only 11 per cent of all agencies surveyed had a formal internal witness support system.

Even within the case study agencies, which did have higher levels of informal and formal systems, only a very small proportion of public interest whistleblowers (perhaps 1.3 per cent, or 6.5 per cent of all whistleblowers who indicated mistreatment) were estimated as having been provided with active management support.

The reasons for this low take-up of organised or dedicated support services, even in the case study agencies, are likely to include:

• the low level of resources dedicated to such programs
• a previous shortage of data about the overall level of whistleblowing
• uncertainty or confusion about the types of employees intended to be targeted
• an absence or inadequacy of procedural guidance on how employees should access the support, including an over-reliance on whistleblowers self-identifying for the purposes of gaining support
• lack of management information systems for ensuring that all deserving whistleblowing cases can be identified and assessed for support
• inadequate or misapplied statutory definitions.

Sources and methods of internal witness support

The main sources of support that currently prevent more whistleblowers from suffering more than they do are not organised support programs, but informal social and professional networks, including family, friends, colleagues, union officials and supervisors.

For those whistleblowers whose experience becomes more difficult, some sources of support, including professional counsellors and more formalised assistance programs, become more important, but supervisors, managers and investigation agencies become increasingly less so.
Case-handlers and managers—while not excessively optimistic about their own success—continue to overestimate the extent to which organised or official sources of support are helping prevent worse outcomes. The extent to which whistleblower support is currently reliant on informal, social and professional networks does not appear to be properly appreciated.

There is a high risk that support will fail in any of the many circumstances in which the dual role of direct supervisors and line managers, described in Chapter 7, can turn from positive to negative. There are also signs that most support strategies are reactive, attuned to bolstering the coping skills of whistleblowers to help them ‘tough out’ difficult situations, rather than geared to management intervention against the sources of workplace conflict.

Reprisals, risk assessment and responses

Seventy per cent of agencies that responded to the agency survey did not carry out any assessment of the risks of reprisal when officials blew the whistle. Only 15 per cent of all agencies were able to nominate anyone with specific responsibility for undertaking or coordinating risk assessments and only 2 per cent indicated that their risk-assessment procedures were formal.

Thirty per cent of agencies indicated that they had no staff (including existing line managers) responsible for protecting whistleblowers from reprisals.

Reasons for the reactive and inadequate nature of systems for managing reprisal risks and other problems include a lack of previous data about the real nature of the risks, and a lack of the internal management information systems needed to enable case-handlers to engage supervisors and other managers in an effective risk-management approach.

Where reprisal risks are realised, agency case-handlers and managers do not currently regard themselves as very well equipped or well placed to deal with them. Their evidence confirms that, generally, allegations that whistleblowers have suffered reprisals or other management lapses are not currently handled well.

In case study agencies, 38 per cent of manager and case-handler respondents with experience of reprisal allegations indicated a belief that disciplinary action was ‘sometimes’ or ‘often’ used as a cover for reprisals.

According to case-handler and manager respondents, the most common reasons for the fact that reprisal allegations are only rarely substantiated relate to difficulties in investigation, including the fact that most reprisals are not acts for which individuals can be held culpable to a criminal standard of proof, but rather are management reprisals and institutional reactions.

Most case-handler respondents from watchdog or integrity agencies were highly critical of agencies’ responses to reprisals, but also quite sceptical—like internal
agency case-handlers—about their own agencies’ ability to improve the situation under existing circumstances.

These results indicate the need for a fresh approach to the handling of whistleblowing cases in which questions arise about the adequacy of the management response, including a new or different relationship between line agencies and integrity agencies in the reporting, monitoring and handling of reprisal risks.

Chapter 10: Evaluating agency responses—the comprehensiveness and effectiveness of agency procedures

Awareness and confidence in legislation
Based on the employee survey, in agencies in which more staff are aware of and confident in whistleblowing legislation, there are more positive attitudes to whistleblowing, higher whistleblowing ‘propensity’ on the part of staff, higher trust in the anticipated management response to whistleblowing and a higher likelihood that serious wrongdoing will be exposed or ‘flushed out’ (lower inaction rates).

Agencies with higher levels of staff awareness and confidence in legislation are not experiencing any lower rates of mistreatment of reporters than other agencies—suggesting that while increased awareness of legislation encourages staff to report and to trust management, more is needed to meet these raised expectations.

Comprehensiveness of policies and procedures
A comparative assessment of the comprehensiveness of the whistleblowing procedures of 175 agencies that responded to the agency survey indicates systemic weaknesses in all jurisdictions in the internal disclosure procedures that guide agencies’ formal responses to whistleblowing.

Agency internal disclosure procedures are typically weakest for procedures relating to support and protection of whistleblowers. Formal procedures are frequently skewed more towards encouraging reporting and setting in place investigative responses to those reports than towards protection or management of the welfare of the individual employees involved.

Only five of the 175 agencies were rated as having developed reasonably strong procedures for the management of whistleblowing, measured against the current Australian Standard.
Impact and effectiveness of procedures

Among the 102 agencies whose procedures were reviewed and that participated in the employee survey, more comprehensive internal disclosure procedures were positively associated with a number of positive outcomes, including:

- higher staff awareness of the procedures
- higher levels of general employee support for whistleblowing
- higher staff trust in management’s likely response if they blew the whistle
- higher proportion of staff who observed wrongdoing who also reported it
- fewer whistleblowers indicating mistreatment by management
- somewhat fewer whistleblowers indicating mistreatment by co-workers.

More-senior staff members in most agencies, however, currently appear to have little accurate grasp of the quality and comprehensiveness of their own procedures. More-senior staff members tended to have lower trust in their own management’s response in agencies whose procedures were in fact more comprehensive, and higher (but probably misplaced) trust in agencies whose procedures were less comprehensive.

While the general weakness of systems for protection of whistleblowers makes it difficult to trace any positive outcomes to better whistleblower support, these results suggest that more comprehensive approaches do yield better outcomes and provide encouragement for agencies prepared to make an effort to develop better whistleblowing management systems.

The patchiness, generally low comprehensiveness and substantial variability of procedures were found across all jurisdictions, indicating a need for the development of new ‘best-practice’ or ‘model’ procedures, clearer statutory requirements and better oversight of the quality of procedures and the adequacy of their implementation.

Chapter 11: Best-practice whistleblowing legislation for the public sector—key principles

Organisational systems for encouraging and managing whistleblowing

This research has shown that, among the set of clearer, first principles needed to inform the revision or development of best-practice legislation for the management of public interest whistleblowing, several principles relate to the need for more effective operational systems at agency and jurisdictional levels.

The need for more effective operational systems is underscored by the extent of differences between the agency and employee survey results, indicating that, in practice, the bulk of public interest whistleblowing is currently occurring
without being recorded, monitored or reported under public interest disclosure legislation.

Legislative reforms requiring prioritisation include:

• redefinition of legislative coverage—that is, subject matter and jurisdiction—in a more comprehensive or ‘inclusive’ manner to support an ‘if in doubt, report’ approach to the encouragement and management of disclosure
• minimum standards for internal disclosure procedures in agencies, particularly for managing the welfare of employees who report
• new frameworks for coordinating the management of public interest disclosures, including the tasking of an appropriate external agency with an oversight role and setting out a new relationship between that agency and public sector organisations.

Realistic compensation mechanisms

There is also a special need for legislative reform to address the current lack of practical remedies for public officials whose lives and careers suffer as a result of having made a public interest disclosure.

The research results and recent case law combine to show that current legislative settings are insufficiently focused on restitution (including financial compensation) as a response to adverse outcomes, as opposed to criminal remedies that are, in any event, inappropriate for the bulk of cases.

Legislation needs to better define the legal responsibilities of employers for the welfare of employees who report, including by providing incentives for public sector managers to be more diligent in exercising their duty of care to ensure a safe workplace for employees by preventing and minimising adverse outcomes.

Recognising public whistleblowing

Contrary to widespread public expectations and the larger logic of whistleblower protection, only one Australian jurisdiction (New South Wales) has legislative provisions dealing with circumstances under which a whistleblower may take a public interest disclosure outside official channels. Even in New South Wales, the provisions are inadequate.

While the research has confirmed that public whistleblowing is statistically infrequent in comparison with internal whistleblowing, it nevertheless does arise—legitimately. Recognition of this fact is of continuing importance to the successful management of whistleblowing as a process, including to the confidence of employees and the understanding of agencies that if authorities fail to act, a further disclosure may well be justified and protected.
Best practice legislation: the key principles
In summary, this chapter presents 13 key principles to form the basis for best-practice whistleblowing legislation, reflecting comparative analysis of existing provisions, feedback on the issues identified through the project, lessons from the empirical research and previous reviews from academic literature.

Chapter 12: Project findings—an agenda for action
In summary, the lessons from the research show particular need for action in all jurisdictions and most public agencies, in the following priority areas:

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
10. legislative action to provide more effective organisational systems and realistic compensation mechanisms, and to recognise public whistleblowing.