

D.

## INTERNAL WITNESS SUPPORT AND PROTECTION

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**Manager**

Support and protection of whistleblowers form the third—and arguably most important—objective of any whistleblowing program. The provision of organisational support to whistleblowers is, however, currently the single weakest area of most agencies' responses (Brown and Olsen 2008a). The bulk of agencies, in most jurisdictions, are urged to give active and urgent consideration to strategies for providing whistleblower support. In particular, agencies are encouraged to develop programs—commensurate with their own size and needs—for ensuring that support strategies are directed and, where necessary, delivered by persons with an institutional role that conflicts as little as possible with the challenges often implicit in providing that support.

Managers and case-handlers 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 indicates that both managers and case-handlers have quite an optimistic view about organisational commitment to protecting reporters. When it comes to effectiveness, while both are positive, case-handlers are a lot less positive than managers.

TABLE 4.1

**The views of managers and case-handlers of the degree of organisational success**

Issue	Case-handlers			Managers		
	Mean	SD	No.	Mean	SD	No.
Commitment of organisation to protecting reporters (1 = not at all strong, 5 = extremely strong)	<b>3.49</b>	0.99	340	<b>3.70</b>	0.90	535
Effectiveness of organisation in managing the welfare of reporters (1 = not at all effective, 5 = extremely effective)	<b>3.05</b>	0.91	338	<b>3.23</b>	0.83	532

Source: Question 59 of the Case-Handler and Manager Survey.

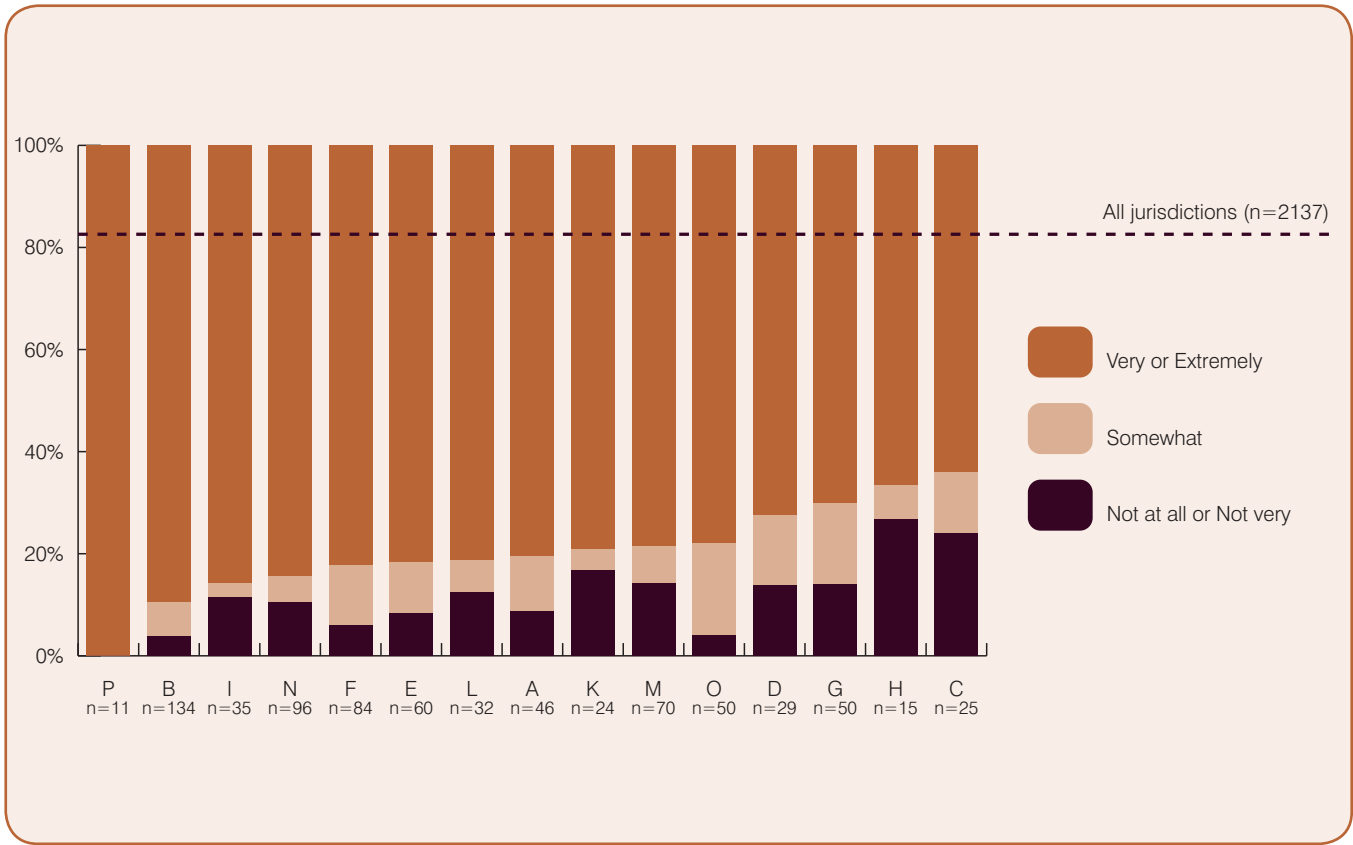
The interview data were more ambiguous on this issue. Managers and case-handlers (n = 34) were asked whether they thought their organisation was proactive or reactive in relationship to whistleblower protection. Thirteen indicated that they considered the organisation to be proactive, and 14 indicated that they considered the organisation to be reactive. The remainder did not offer an opinion.

Nevertheless, the results across the case-study agencies show that some organisations are considerably more successful than others in tackling this challenge. Figure 4.1 shows the varying proportions of all reporters (that is, of both public interest and personnel grievance matters) 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 that 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).

FIGURE 4.1

**Likelihood of reporting again among all reporters by case-study agency (proportion)**



Source: Question 34 of the Employee Survey.

All agencies confront the dilemma of the appropriate scale, resourcing and organisational model of internal witness support. As pointed out in Section A3, 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 E. Whichever options are chosen, evidence from across the case-study agencies points to common elements, all of which should 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 mandate 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 morale and performance.

There is a strong relationship between whistleblowers’ perception about their treatment by the organisation and their stated willingness to report wrongdoing again (Smith and Brown 2008:127). 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 minimising employee perceptions of mistreatment in many of the cases where support was provided.

An even more persuasive 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 insight from the research was that internal support for whistleblowers is not necessarily a totally new or different strategy to other programs for maintaining or restoring healthy relationships within the workplace—even if it is often 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 2001*:

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.

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

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

D1. WHISTLEBLOWER/INTERNAL WITNESS

SUPPORT

Checklist items

- A proactive support strategy for organisation members who report wrongdoing (that is, management initiated and not simply complaint/concern driven), including
  - designation of one or more officers with responsibility for establishing and coordinating a support strategy appropriate to each whistleblowing case
  - support arrangements tailored to identified risks of reprisal, workplace conflict or other adverse outcomes.
- Risk assessment and support decision making that directly involves
  - the whistleblower(s) or other witnesses involved

- the identification and involvement of agreed support person(s) (for example, 'confidants', 'mentors', 'interview friends' or similar) with agreed roles.

## 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 vital to preventing or minimising 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 not backed up by the necessary resources.

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**Manager**

In making decisions about organisational obligations to provide support to whistleblowers, it is desirable to have a clear picture about where whistleblowers are likely to seek their support. The research project looked at this issue in some depth (Brown and Olsen 2008a:213–22). In summary, the project found that whistleblowers did not turn to the formal support structures in their organisation when they were experiencing a reporting incident. They sought their support from work colleagues (50 per cent) and family (44 per cent). Many sought support from the union or professional association (16 per cent). When making a report, the employee's supervisor was rated as the fifth most likely source of support (16 per cent) with formal internal support units rated twelfth. Where the reporting experience involved bad treatment, the pattern of support was broadly the same although formal internal support units were then used more frequently.

In brief, notwithstanding organisations' commitments to supporting whistleblowers, in practice, most whistleblowers leaned on family, friends and work colleagues.

As mentioned above, many reporters turned to their union or professional association for support. The issue was discussed frequently in the reporter interviews. Attitudes were evenly divided, with 14 reporters relating positive experience and 15 reporters relating negative experiences ( $n = 58$ ). These organisations have the potential to provide significant support and benefit to reporters by advising on employment conditions and administrative review mechanisms, and providing personal support. Some reporters, however, expressed disappointment with the support they received from the union or professional association. These sources of support have resource limitations and, on occasion, are faced with the situation of one member reporting wrongdoing involving another member. That makes it very difficult for the union or professional association to meet the expectations of all parties.

Overall, managers and case-handlers were ambivalent about the effectiveness of their organisations in supporting reporters (Brown and Olsen 2008a:222, Table 9.1). While some were proud of their organisation's efforts, others were more critical. External agencies also have responsibility for the care and protection of those whistleblowers who choose to take their case to an external agency. Annakin (2011, p. 229) was critical of the preparedness and the capacity of those external agencies to fully protect and support those whistleblowers that came to them.

Further research into the adequacy of support mechanisms in organisations shows a similarly bleak picture.

- Support functions within organisations deal only with a small proportion of reporters. Crucial questions are posed by the research results about the size and reach of existing formal internal witness support programs. It is significant, however, that all 15 of the case-study agencies employing the respondents in Table 4.1 stated in their responses to Question 25 of the Agency Survey that they had systems and procedures for identifying internal witnesses in need of 'active management support', and nine of the 15 agencies indicated that they had a formal internal witness support program (Brown and Olsen 2008a:210).
- Most organisations rely upon employees needing support to actively self-identify (Brown and Olsen 2008a:211).
- Few agencies have even basic procedures for actively identifying internal witnesses who need support. When asked whether they had even basic procedures for identifying internal witnesses who might need active management support in Question 25 of the Agency Survey, 46 per cent of all agencies (n = 298) answered 'no'. Also, the analysis of procedures indicates that elements relating to support are weak (Roberts 2008:257).
- There is uncertainty in organisations about the best method of identifying employees who are in need of organisational support. When asked how internal witnesses accessed organisational support, no clear pattern emerged, with only 43 agencies or 23 per cent indicating that the agency took the initiative (n = 162, noting that 304 agencies responded to the Agency Survey) (Brown and Olsen 2008a:211, Table 9.5).
- Many agencies were reactive in the implementation of whistleblowing policies and procedures (including those dealing with support) rather than being proactive. In the interviews with managers and case-handlers (n = 34), participants were asked their opinion on whether the organisation was proactive when it came to handling reports of wrongdoing. Opinions were evenly divided: 12 described their organisation as being proactive, and 13 described their organisation as being reactive. Both managers and case-handlers were evenly divided on the issue.

A thread running through the analysis above is the reliance on employees to self-identify as needing support. This requires 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. Many reporters deserving support might prefer not to access specialised support, at least initially, for fear of possible negative effects of being tagged as a whistleblower—a fear expressed by a number of the reporters interviewed. Staff who see whistleblowing processes as possible alternative means for pursuing a personnel or private grievance were more ready to try to enlist in such a program.

If agencies do not possess a sufficiently integrated system for tracking and notification of wrongdoing reports—discussed in Section C1—management runs the risk of being limited to a reactive approach, due to insufficient understanding of the level of whistleblowing within the organisation. This would mean reports being handled by supervisors and other managers in the first instance, with oversight or support occurring only after conflict arises.

*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.*

**Manager**

*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.*

**Reporter**

## SUPPORT ARRANGEMENTS TO ADDRESS IDENTIFIED RISKS

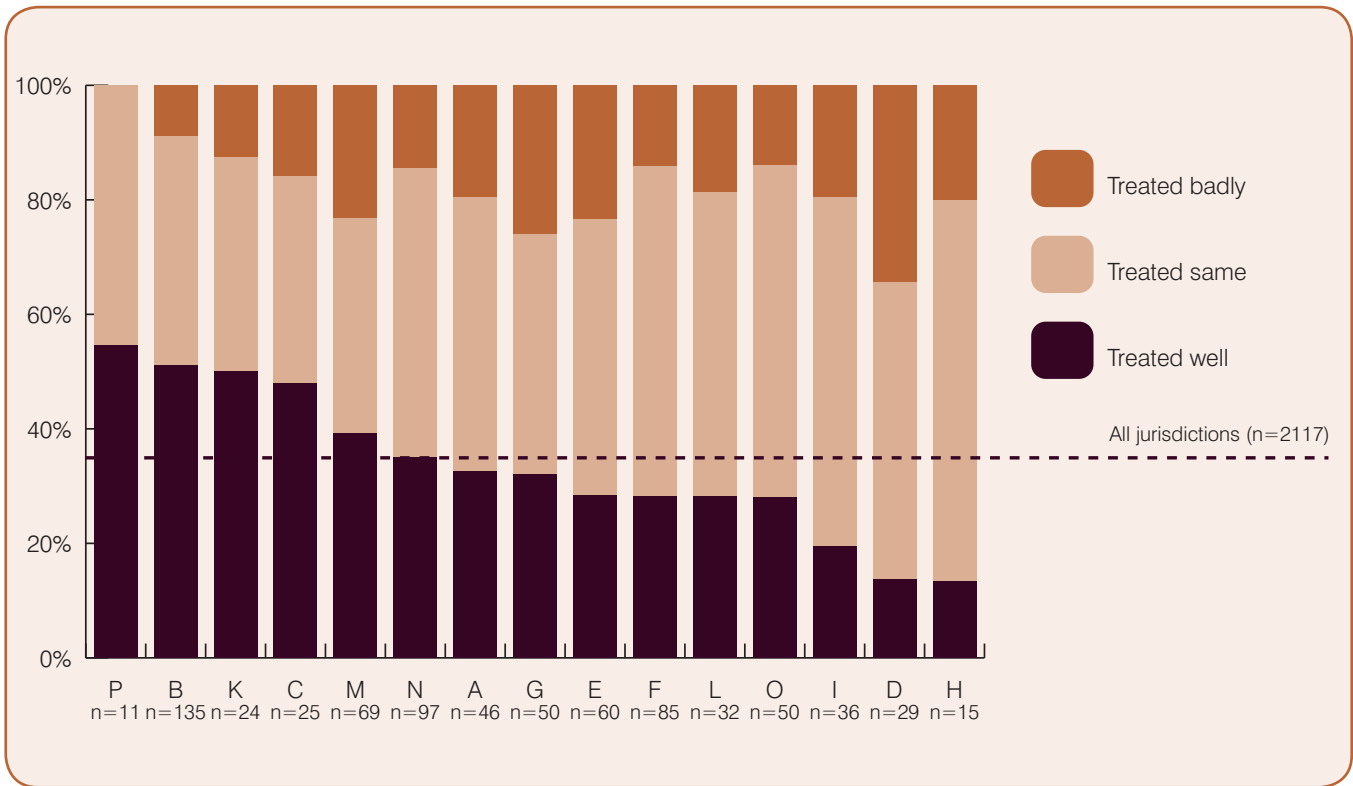
The adverse impact upon employees who come forward with reports of wrongdoing can be immense (Smith and Brown 2008:132, Table 5.16) and the likelihood

of adverse effects is high (p. 123, Figure 5.1). This indicates the high risks of detrimental outcomes that surround public interest whistleblowing.

As with many other dimensions of the whistleblowing process, organisational performance varied significantly with respect to impacts upon reporters. Figure 4.2 shows the proportion of all reporters (that is, of both public interest and personnel grievance matters) from the case-study agencies who indicated adverse treatment, as well as those who indicated being treated the same or well.

FIGURE 4.2

Treatment by managers: all case-study agency reporters (proportion)



Source: Question 30 of the Employee Survey.

While the research project focused largely on the proportion of whistleblowers who reported being treated badly, the indicator presented here compares the case-study agencies on the positive measure of whether employees stated that they were treated well as a result of reporting. This was selected as providing a more objective indicator of good performance, since there is no guarantee that *any* employee will ever claim to have been treated well, but there might always be some employees who feel that they were treated badly even when objectively they were treated professionally.

For agencies to maximise 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.

TABLE 4.2

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 wrongdoers	7	9	7
Unsafe or humiliating work	8	14	20
Essential resources withdrawn	9	20	23
Missed promotion	10	10	10

Sources: Question 53 of the Internal Witness Survey; Question 48 of the Case-Handler and Manager Survey.

Table 4.2 ranks the top-10 adverse effects nominated by reporters, along with the rankings of managers and case-handlers who believed that the relevant type of harm had occurred at least once in the cases with which they had direct experience. A more complete list of adverse effects appears in Table 5.13 of the first report (Smith and Brown 2008:129).

These adverse effects could be interpreted to be low-level adverse outcomes, which many employees might normally be expected to endure and survive without difficulty. This would, however, be a superficial interpretation. The reality is that these outcomes are indicative of changes in the wellbeing and career of a whistleblower that might 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 might be inflicted passively or negligently by an organisation, simply through lack of organisational support or failure to assist managers to treat employees in a sympathetic way.

*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.*  
**Reporter**



TABLE 4.3

**Feelings experienced by reporters (n = 220) as a result of whistleblowing (ranked in order)**

Feelings	Scale	Mean	SD
Stress	1 = more stress to 5 = less stress	<b>1.73</b>	1.05
Trust	1 = decreased trust in organisation to 5 = increased trust	<b>1.77</b>	1.13
Frustration	1 = frustration to 5 = satisfaction	<b>1.78</b>	1.14
Betrayal	1 = betrayal to 5 = support	<b>1.89</b>	1.14
Anxiety	1 = anxiety to 5 = confidence	<b>1.91</b>	1.09
Power	1 = powerlessness to 5 = powerfulness	<b>2.03</b>	1.15
Persecution	1 = persecution to 5 = affirmation	<b>2.15</b>	1.15
Mood	1 = increased mood swings to 5 = decreased mood swings	<b>2.26</b>	1.03
Connection	1 = withdrawal from others to 5 = connection with others	<b>2.31</b>	1.13
Self-esteem	1 = decreased self-esteem to 5 = increased self-esteem	<b>2.54</b>	1.23
Self-worth	1 = decreased self-worth to 5 = increased self-worth	<b>2.65</b>	1.27

Source: Question 48 of the Internal Witness Survey.

It needs to be emphasised that, contrary to the views held by many, the most common source of adverse effects on reporters was mistreatment by management rather than by individuals or groups of co-workers (Smith and Brown 2008:121–7). When asked to rank what they considered to be the most likely adverse effect on reporters, managers overestimated the effect of ostracism by co-workers and underestimated the likelihood of poor treatment by management.

TABLE 4.4

**Rating of treatment by managers and co-workers as perceived by whistleblowers, case-handlers and managers (mean)**

	Treatment by managers (1 = extremely well to 5 = extremely badly)			Treatment by co-workers (1 = extremely well to 5 = extremely badly)		
	Mean	SD	No.	Mean	SD	No.
Non-role reporters responding to Employee Survey (all agencies)	<b>2.92</b>	1.04	1477	<b>2.67</b>	0.88	1457
Internal witnesses (case-study agencies)	<b>3.78</b>	1.14	222	<b>2.88</b>	1.08	218
Case-handlers (case-study agencies)	<b>3.11</b>	0.91	334	<b>3.38</b>	0.74	333
Managers (case-study agencies)	<b>2.72</b>	0.89	528	<b>3.23</b>	0.77	519

Sources: Questions 30 and 31 of the Employee Survey; and in the case-study agencies Questions 50 and 51 of the Internal Witness Survey, against estimates of treatment by case-handlers and managers; Questions 32 and 33 of the Case-Handler and Manager Survey.

Table 4.4 presents the mean rating of treatment by managers and co-workers as perceived by whistleblowers. Case-handlers appear to be fairly accurate in predicting the level of bad treatment by management, while managers underestimate the level of bad treatment by management. Both case-handlers and managers overestimated the degree of adverse effects caused by co-workers.

INVOLVEMENT OF IDENTIFIED SUPPORT PERSONS

The workshops of industry partners and representatives of the case-study agencies indicated that another key element in a successful support strategy is the availability 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 infrastructure, support persons are expected to

- help identify and rationalise reprisal risks
- assist the whistleblower to cope
- help identify any actual emergent reprisals or problems, including early warning to management 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
- 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, supervisor, line manager, an internal witness support coordinator, case manager, human resource manager or CEO).

Organisations are urged to be creative in considering the potential sources of assistance that reporters use, noting the preferences of reporters as indicated in the table earlier in this section. One large case-study agency contracts former experienced managers of the agency (now retired) to provide mentoring-style support to whistleblowers on an as-needed basis. Some larger agencies also offer professional staff such as welfare officers, counselling 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 in Section E1.

- ‘Confidants’ or ‘mentors’ are 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).
- ‘Peer support persons’ are officers from within or close to the whistleblower’s own workplace—for example, a trusted and capable friend—who are 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. The case-study agencies that ranked best in the comparative analysis of outcomes were, however, conspicuous for having well-developed strategies of this kind.

## PRACTICAL ACTION

It is recommended that organisations give priority to developing (or maintaining) effective systems for the receipt and notification of disclosures to ensure appropriate monitoring of and responses for internal witness support.

Ideally, at least one, and preferably more than one, manager within the agency should have a designated responsibility to provide—or coordinate the provision of—active management support to all whistleblowers in need or potential need. Those designated should have the 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). Further, it is suggested that they have formal responsibility for the provision of support, to deal with the complex and often high-conflict circumstances that might arise, and to ensure that management decisions in relation to the whistleblower are appropriately guided, monitored, adjusted and, where appropriate, initiated.

The workshops of industry partners and representatives of the case-study agencies indicated that it is important not only that support strategies are designed to address the actual risks faced by whistleblowers, but also that whistleblowers are actively involved in all key risk assessments and decisions regarding the support arrangements to be put in place around them. Effective communication, advice and feedback are vital ingredients in maintaining the wellbeing of whistleblowers. Of particular importance are 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.

Finally, it is recommended that whistleblowing support strategies draw on a network of potential support persons with the authority, skills and capacities needed to prevent and contain workplace problems associated with reporting. Two types of non-specialist support person roles—which complement the formal responsibilities of management—include confidants and mentors, or peer support officers.

## D2. INFORMATION AND ADVICE

### Checklist items

- Timely provision of information, advice and feedback to reporters and witnesses about
  - the actions being taken in response to disclosure
  - reasons for actions (including no action)
  - how to manage their role in the investigation process, including who to approach regarding issues or concerns regarding reprisals
  - ultimate outcomes, benefits to the organisation and remedial change.
- Provision of information, advice and access to
  - appropriate professional support services (for example, stress management, counselling, legal, independent career counselling)
  - 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 are crucial to the minimisation of real and apprehended risks of whistleblower mistreatment (Smith and Brown 2008:117–21). While noting that in many instances reports of wrongdoing are investigated and found to be lacking in substance, various organisations will meet the challenge to keep whistleblowers informed differently.

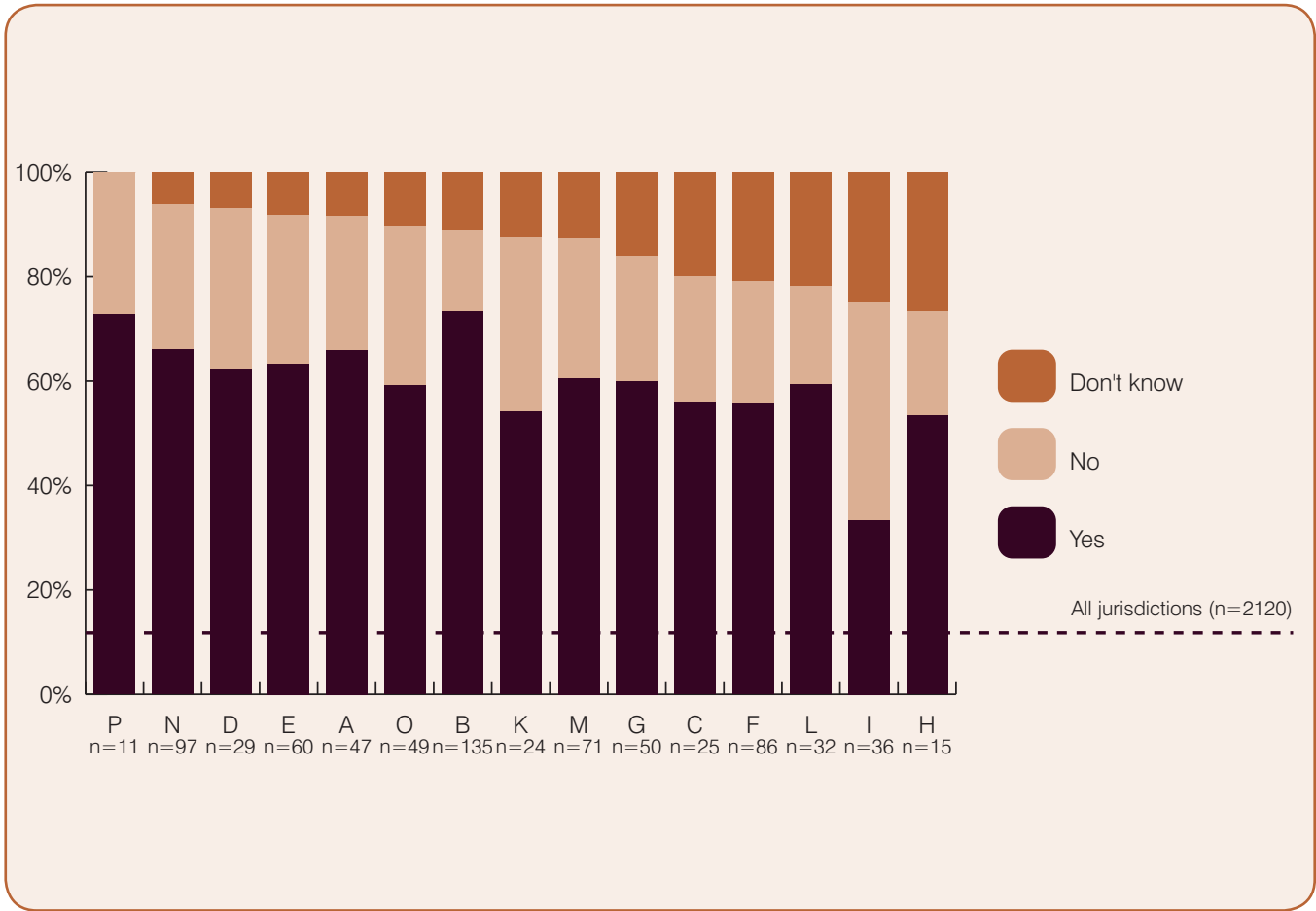
Figure 4.3 shows the variation between the case-study agencies as ranked by the proportion of all reporters (that is, of both public interest and personnel grievance matters) who knew whether their disclosure was investigated. The agencies are ranked according to the proportion who did not know one way or another, since while there might be a number of legitimate reasons why agencies might not investigate a report of wrongdoing (for example, 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.

*We weren't [informed], 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 [to] 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.*

**Reporter**

FIGURE 4.3

Knowledge of whether investigated: all reporters (proportion)



Source: Question 32 of the Employee Survey.

It is suggested that—whether or not the reporter accepts the validity of an unsubstantiated outcome—there is an obligation upon the organisation to report back to the whistleblower with the result and an explanation. While there might be a number of legitimate reasons why agencies might not investigate a report of wrongdoing (for example, lack of jurisdiction, or because 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.

Notwithstanding that some organisations do better than others at informing reporters of outcomes, generally whistleblowers do not feel that they are being adequately informed of the outcome of their reports. Table 4.5 indicates the low levels of internal witness satisfaction with the amount of information that was provided to them about the investigation process.

TABLE 4.5

Internal witness perceptions of feedback

Issue (all scaled 1 = 'not at all' to 5 = 'extremely')	Mean	SD	No.
How well informed about progress of initial investigation	2.05	1.21	221
How well informed about outcome of initial investigation	2.13	1.25	220
How well informed about progress of further investigation	2.15	1.20	137
How well informed about outcome of further investigation	2.11	1.21	134

Sources: Questions 33, 35, 41 and 43 of the Internal Witness Survey.

For the internal witnesses who were interviewed, lack of feedback was a very common theme and was often associated—in the minds of the reporters—with the adverse effects caused by the whole reporting process.

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 processes, including whom (and when) to approach regarding workplace issues or concerns. A central issue was that of managing whistleblowers' expectations regarding outcomes from an early stage.

As indicated in the reporter interviews, when an employee makes the decision to report wrongdoing, they usually have expectations of what is going to occur. Logically, those expectations are linked to the nature of the wrongdoing that has motivated the reporter. Expectations of reporters can be grouped into two broad categories

- that a particular employee in the organisation would be held accountable for their actions (these expectations can range from the target person having their employment terminated through to—a lot more benignly—training to do their job better)
- a change in policy, procedures or administrative practices.

Some reporters recognise, in hindsight, that their expectations were not realistic. The word 'naive' was used a number of times.

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

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

The workshops of industry partners and representatives of the case-study agencies

*I had no expectations. I didn't know what the heck I was doing.*  
**Reporter**

indicated that line managers have a key responsibility in a successful program to manage these expectations. Of course, while the interviews indicated that there is always the potential for line managers to attempt to squash a report where the complaint relates to, or impacts upon, them, this highlights the importance of having multiple reporting pathways, as discussed in Section B.

### ACCESS TO PROFESSIONAL SERVICES

Counselling is perceived as an almost universal solution for issues identified with whistleblowers. The interviews with managers and case-handlers contain frequent mentions of external counselling services being made available to whistleblowers to assist them with any problems that they might encounter. In Question 63 of the Case-Handler and Manager Survey, case-handlers (n = 253) and managers (n = 394) in the case-study agencies were asked to nominate improvements to handling of reports in their agencies. The availability of external counselling services was frequently mentioned as an improvement that could be made to organisational arrangements.

*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.*

**Reporter**

While some reporters express appreciation for the effort of counselling staff, others are critical, and many are ambivalent. A common model for counselling services in the Australian public sector is to have outsourced qualified counsellors (that is, clinical psychologists), paid for by the organisation on a pay-by-use system. The capacity for these counsellors—being bound by confidentiality provisions—to involve themselves in the institutional resolution of issues is usually limited to providing the client with advice. It should be noted that, in the table earlier in this section indicating sources of support, counsellors were rated quite highly and their use increased markedly if the reporter experienced adverse treatment or harm.

While no case-handlers or managers opposed the use of trained counsellors 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.

Agencies are also advised to consider extending arrangements for ensuring that whistleblowers can access other appropriate professional services, including legal support and independent career counselling 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 A4) and the importance of advertising external reporting pathways to staff (Section B3) 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 overseeing whistleblowing matters in their jurisdiction (Section C1).

These measures, along with others below, can help organisations share responsibility for the handling of whistleblowing matters in circumstances where there might be a high risk of conflict between the whistleblower and the organisation. This can occur even in agencies with elaborate support processes. If such circumstances arise, or fail to be successfully prevented, it is important that internal witnesses know that they may approach an independent oversight agency as a safety valve. Where possible, they should do so with the agency's support. It is recommended that



governments ensure at least one coordinating integrity agency has the statutory authority and capacity to respond readily to such cases (Brown and Wheeler 2008:310).

## PRACTICAL ACTION

A reporter can easily become concerned or dissatisfied if they feel they are being left in the dark or that nothing is happening. To ameliorate such concerns, managers, in consultation with specialist areas, could assure reporters

- that the organisation has assessed their information
- what the organisation has done or intends to do with the information
- the likely time frames involved
- their involvement in the process (for example, providing further information to investigators)
- the protections that will apply
- their responsibilities (for example, maintaining confidentiality)
- that their organisation will keep their identity confidential unless this is unreasonable or impractical
- how their organisation will update them on progress and outcomes
- who to contact if they want further information or are concerned about reprisals.

There is a reciprocal obligation upon the reporter to be prepared for what can be a difficult process. At the outset, it is suggested that the internal witness support area or a manager discuss with the reporter what outcome they want, and whether the organisation will be able to deliver.

Finally, organisations are urged to advise reporters of how to access any employee assistance or other counselling programs, as well as other relevant professional services.

## D3. PREVENTING AND REMEDYING

### DETRIMENTAL ACTION

#### Checklist items

- Mechanisms for ensuring that
  - the welfare of organisation members who report wrongdoing is monitored from the point of first report
  - positive workplace decisions are taken for preventing, containing and addressing risks of conflict and reprisal
  - supervisors or alternative managers are directly engaged in risk assessment, support decision making and workplace decisions, to the maximum extent possible.
- Clear authority for support personnel to involve higher authorities (for example, CEO, audit committee and external agencies) in whistleblower management decisions.
- Specialist expertise for investigating alleged detrimental actions or failures in support, with automatic notification of such allegations to relevant external agencies.
- Flexible mechanisms for compensation or restitution in the event of any failure to provide adequate support, or prevent or contain adverse outcomes.



## MONITORING WELFARE FROM POINT OF FIRST REPORT

With few exceptions, public sector organisations are not good at recognising the potential for detrimental action arising from the reporting of wrongdoing (see Section D1). Therefore, there is a need for most 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 (for example, work performance) of employees who report wrongdoing, as close as possible to the time when they first report it.

The research confirms 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 is or is 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.

## POSITIVE WORKPLACE DECISIONS AND STRATEGIES

*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 [to].*

**Manager**

A corollary of the risk-management and proactive-support strategy approaches discussed earlier (Sections C2 and D1) is that the support strategy will flow through to any necessary positive workplace decisions concerning the prevention or containment of risks of conflict or reprisal, before such problems arise.

Reprisals against persons who report wrongdoing are predictable in most organisational environments, as discussed in Section D1. The tendency in such circumstances can be for managers at all levels to 'back off and 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 them (operationally, as against in theory) can contribute to an immediate sense of grievance on the part of whistleblowers, and a 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, it was most desirable that agencies developed clear processes for when and how 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 might sometimes be needed to advise complainants or others about what action management is taking—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 faced by 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 any 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). If there is, an alternative line of management supervision might need to be established.

A number of managers interviewed confirmed the view that having professional counsellors, particularly external counsellors, involved in support does not relieve line managers of their duty to support and protect their staff. Another dimension to this issue is that, unless positive arrangements are put in place to include line managers in the support strategy (where this is possible), some supervisors might willingly take the risk-averse course of assuming that their responsibility for the employee has ceased.

While it is logical to make a judgment that more resources need to be put into supporting whistleblowers, this is not the complete solution. One large public sector organisation with multiple physical locations adopted the practice of locating counselling services in regional hubs with a recommendation to its organisational units to refer personnel-type problems to those services. That policy was found not to be optimal and the organisation, while keeping the counselling services, eventually made its frontline managers in each organisational unit responsible for dealing with the issues. This highlights the inevitable conflict between having high-quality, consistent professional services remote from the workplace and the clear advantage of locally dealing with issues while accepting the problems of inconsistency that might accompany such an arrangement.

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

While no case-handlers or managers opposed the use of trained counsellors 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 previous 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 it is alleged. (A major reason for this might be that detrimental action is often sourced to management itself, as noted in Section D1).

Those shortcomings are the following.

- Many organisations do not have specific policies for responding to reprisals against employees who report wrongdoing. (When asked whether they had formal procedures and policies for responding to reprisals against employees who had reported wrongdoing in Question 37 of the Agency Survey, 45.1 per cent of agencies said yes, 52 per cent of agencies said no, and 3 per cent did not respond; n = 304).
- Many organisations do not have staff with responsibility for ensuring that

*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 inform employees of how that works. And so I think, often reprisals still occur because line managers, particularly, don't know how to protect staff.*  
**Manager**

*I think the resources are there, I'm not sure we use them as effectively as we could. I think it's also beyond the formal resources. It's all very well to say 'well, we've got x number of bodies working in this area and we've got welfare and we've got this and we've got that'—they're not the issues. It's the general what happens on the floor in the workplace that really needs to be supported. So, all of those other things can happen, and they can happen really, really well because that's someone's job but unless they're supported back in the normal working environment and unless that happens well then the person's going to feel unsupported no matter what other resources were thrown at them.*  
**Manager**

employees who report wrongdoing are protected from reprisals. (In response to Question 38 of the Agency Survey about the staff responsible for ensuring that employees who report wrongdoing are protected from reprisals, 29.3 per cent of agencies indicated that no staff were identified, 30.6 per cent of agencies nominated investigations staff, 20.4 per cent nominated support staff, 32.6 per cent nominated the employee's supervisor or line manager, and 24 per cent nominated some other sort of support; n = 294. Note that agencies were able to nominate more than one source of support.)

- Those elements in whistleblowing procedures that deal with the support and protection of reporters are the least likely to be present (Roberts 2008:258).
- Where a whistleblower takes a matter involving reprisals to an external agency, it is not likely that they will experience effective action (Annakin, 2011, pp. 241-245).
- As indicated in Table 4.6, the views of managers and case-handlers indicated that they generally accepted that reporters were likely to experience problems but that their organisation was not particularly well equipped to deal with them.

TABLE 4.6

**General views of managers and case-handlers on reprisals**

Issue	Mean	SD	No.	Mean	SD	No.
Frequency of reporters experiencing problems from reporting (1 = never, 5 = always)	3.62	0.82	335	3.43	0.74	529
How well organisation deals with allegations of reprisals (1 = not at all well, 5 = extremely well)	2.89	0.99	331	3.03	0.90	510

Sources: Question 31 and Questions 34–36 of the Case-Handler and Manager Survey.

The workshops of industry partners and representatives of the case-study agencies identified the practical implications of the shortcomings discussed above as follows.

- Organisations often have difficulty distinguishing between what is reasonable management action and what the complainant considers to be some form of reprisal. In some circumstances, what are in fact reprisals are presented as reasonable action by management. In other circumstances, detrimental action might be taken in relation to an employee (for example, in a later workplace restructuring) without the full impacts of the decision upon the employee being understood by management.
- Organisations have difficulty distinguishing the linkage between performance issues and whistleblowing. Sometimes non-performing staff were left to continue on their course without any performance management action being taken. When there is a change in management, or some other trigger, action to increase performance can trigger a disclosure by the employee—which could be totally or partially designated as in the public interest. When an organisation finds itself in that situation, it has to rely upon prior documentation to verify the reporter's past poor performance and to demonstrate that the action management is taking is reasonable in the circumstances and would be taken against any employee whose work performance was the same. In other words, the management of reprisals is one aspect of the good management of staff.
- There can be an interaction between bullying and poor performance. The complainant might feel that bullying by management has caused their poor

performance, while the management perspective is that their 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.)

- Current procedures in 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 identifiable management action but any reprisals against the reporters are overlooked.

Where formal suspicions or allegations of detrimental action arise, many study participants confirmed that an adequate investigative approach is often not undertaken—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).

Allegations of mistreatment are frequently associated with a lack of substantiation of the original disclosure (Smith and Brown 2008:115, Table 5.2). While in some cases this might 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 resolve any reprisal allegations.

It is recommended that organisations make detailed and flexible agency procedures for reprisal investigations a clear priority (Brown and Wheeler 2008:302). It was also suggested to the research team that, where allegations of detrimental action arise involving senior managers, special arrangements are needed to engage independent investigators such as 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, or ensure close monitoring of matters flagged as high risk.

## MAKING IT RIGHT: COMPENSATION AND RESTITUTION

The research established the need for flexible mechanisms for compensation or restitution where there is failure to provide reporters with adequate support, or to prevent or contain foreseeable adverse outcomes. Agencies need to develop 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. The first report made a number of recommendations for legislative reform (Brown et al. 2008a:271–7) and, as noted elsewhere in this guide, there have been legislative developments occurring within the context of these recommendations. The research team has urged legislatures in jurisdictions engaged in revising public disclosure legislation to recognise in future legislation the detriment that whistleblowers can suffer.

An issue that agencies are encouraged to explore is the usefulness of formal apologies to employees, or former employees, who reported wrongdoing and suffered adverse effects as a result of that reporting. In particular circumstances, a formal apology from the CEO can play an important part in putting the difficult situation faced by reporters behind them. This issue was discussed at length at the workshops of representatives from the case-study agencies and industry partners. One case-study agency has adopted the practice of giving formal awards to staff who come forward with reports of wrongdoing. These awards are presented at an annual ceremony where similar awards for exemplary performance are recognised.

In a hearing as part of the inquiry into the protection of whistleblowers by the House of Representatives Standing Committee on Legal and Constitutional Affairs, the National President of Whistleblowers Australia, Peter Bennett, noted:

I would say that most people do not look for compensation. All they want to do is go back to the position they were in without a loss and accept a really nice, genuine apology. That is what most people would prefer.

*(House of Representatives Standing Committee on Legal and Constitutional Affairs 2008:25)*

In addition to apologies, management failure to protect or support internal witnesses should be actioned through disciplinary measures, and in organisational assessments of the relevant manager's fitness to retain supervisory responsibilities.

*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.*

**Reporter**

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 are encouraged to consider their own options for bypassing or fast-tracking formal systems in order to facilitate compensation in deserving cases.

## PRACTICAL ACTION

Procedures for the routine independent verification of the work performance of employees who report wrongdoing would ideally be complementary to those for the investigation of allegations about reprisals or failures. Such procedures are recommended as a proactive measure to help resolve later issues in cases when they arise, and as a preventive measure against unjustified actions being taken. Elements of such a procedure could 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
- 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.

Organisations are encouraged to ensure that their support systems are triggered automatically and operate proactively to prevent or mitigate risks of reprisal or other workplace conflict. For example, organisational policies and procedures could clearly state

- that managers and supervisors are responsible for dealing with issues that arise in their workplace and for providing support to staff who report wrongdoing, regardless of any authority that rests with specialist areas such as a formal internal witness support unit
- when and how to intervene in workplaces to prevent detrimental action
- how reprisals against employees who reported wrongdoing will be investigated or otherwise dealt with
- when to communicate with reporters about what action the organisation is taking
- when formal apologies or compensation should be given to employees or former employees who report wrongdoing and suffer adverse effects as a result.

Logically, investigators of detrimental action will 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 might have fallen down in its responsibilities to prevent or contain workplace problems, even if specific, deliberate reprisal action cannot be proved or is not an issue.

The issues described above are further clarified in the ‘Sample policies and procedures’ at the end of this section.

D4. 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 programs and to identify ongoing, unreported support needs.

EXIT STRATEGIES FOR FINALISING WHISTLEBLOWING CASES

During the surveys and interviews, both managers and case-handlers recognised the importance of 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.

TABLE 4.7

Value of exit and closure procedures

Issue	Case-handlers			Managers		
	Mean	SD	No.	Mean	SD	No.
Value of exit or closure procedures to reporter (1 = not at all valuable, 5 = extremely valuable)	3.71	0.97	98	3.68	0.83	145
Value of exit or closure procedures to organisation (1 = not at all valuable, 5 = extremely valuable)	3.69	0.96	98	3.60	0.85	145
Proportion of reporters able to put the matter behind them (1 = none or almost none, 5 = all or almost all)	3.15	1.30	319	3.07	1.33	487

Note: Respondents were only asked to rate the first two statements if they indicated in a previous question (Question 51) that their organisation used exit or closure procedures after investigation and management action ceased.

Sources: Questions 53–55 of the Case-Handler and Manager Survey.

Table 4.7 indicates case-handlers and managers are generally positive about the value of exit and closure procedures. Information from the agencies presented a much bleaker picture. Question 33 of the Agency Survey asked whether agencies had a formal exit or closure procedure for internal witnesses when they ceased to receive active management support. Of those agencies with some form of procedures for identifying internal witnesses who might need active management



support (n = 160), 65.6 per cent indicated that they did not have exit procedures, 12.5 per cent indicated that they conducted formal exit interviews, 19.4 per cent indicated that they sent a formal letter to internal witnesses and another 14.4 per cent indicated that they had some other sort of procedure. When asked to describe these other procedures, agencies most commonly responded that they had informal processes that were undertaken on an ad-hoc basis. (Note that agencies were able to nominate more than one procedure.)

*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.*

**Reporter**

**Interviewer:** *Has there been any closure?*

**Reporter:** *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.*

In keeping with other findings in this area, however, the research identified shortcomings in the way in which organisations dealt with exit strategies. Only a minority of organisations demonstrated that formal exit procedures were regularly used. Question 58 of the Internal Witness Survey asked internal witnesses (n = 253) about the procedures that were used to mark the end of their involvement in the whistleblowing processes: 35.2 per cent of reporters said that 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. Regardless of whether or not organisational exit procedures are in place, such a response from internal witnesses indicates that they are not being fully utilised.

While one 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, whistleblowers can also experience a great deal of difficulty moving on from the adverse effects of the reporting process.

- Question 59 of the Internal Witness Survey asked internal witnesses (n = 253) about whether the whistleblowing experience was behind them: 37.5 per cent indicated that the matter was still very much with them; 11.6 per cent said that the matter was partly behind them, but they still had issues to deal with; 24.6 per cent said the matter was almost completely behind them, but they still had issues to deal with; and 26.3 per cent said the matter was completely behind them.
- In the interviews with reporters (n = 58), participants were asked whether or not they had moved on from the whistleblowing event. Of those who responded to the question, 43.1 per cent said that they had not moved on; 17.2 per cent indicated that they had moved on; and 10.3 per cent were undecided. Of those who said that they had put the events behind them (n = 10), four had left the work area, another four indicated that their report had been vindicated and two noted that the person about whom they had complained had left the work area.

Those interviews with internal witnesses indicated that, while some had moved on with their lives, many were struggling to put the whistleblowing experience behind them. Asking internal witnesses about closure often brought out the bitterness, helplessness and frustration they felt. Many managers and case-handlers indicated empathy for those reporters who could not put the matter behind them.

## ONGOING MONITORING OF THE WELFARE OF INTERNAL WITNESSES

Few agencies undertake follow-up or monitoring of the welfare of internal witnesses after they have ceased to receive active management support. Question 34 of the Agency Survey asked whether agencies undertake follow-up or monitoring of the welfare of internal witnesses after they have ceased to receive active management support: 18 per cent of all agencies (n = 304), and 35 per cent of agencies with internal witness support procedures (n = 156), indicated that they did so. Those agencies were asked to briefly describe the follow-up or monitoring that they undertook. The most commonly mentioned responses were external watchdog agencies, unions

and external counselling services. Very few organisations indicated that they used internal resources to monitor the wellbeing of internal witnesses.

Problems can occur for internal witnesses long after the report is made. This might 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 decline in a whistleblower's career prospects due to the desire to avoid stress and conflict).

Organisations should not automatically assume that all internal witnesses should be followed up indefinitely, even after the situation has been resolved. Some internal witnesses might 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. Based on discussions from the workshops of representatives from the case-study agencies and industry partners, a preferable approach from the perspective of internal witnesses is for the organisation to provide them with 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 further assistance is required.

*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 there'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.*  
**Manager**

PRACTICAL ACTION

Ongoing monitoring, rather than interventionist follow-up, appears to be a preferable option. 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 are encouraged to 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 POLICIES AND PROCEDURES

Whistleblower/internal support and protection

All persons who manage staff in the organisation have the primary responsibility for dealing with whistleblowing issues that arise in their work unit, including the support of those who report wrongdoing and protection for those persons from reprisal action. Those responsibilities exist regardless of any authority that rests with specialist areas, such as (name of organisational support unit).

Support strategy

The organisation should formally designate a senior officer as Whistleblower Support Officer (or some other designation in accordance with organisational nomenclature) who is responsible for initiating and coordinating action to support persons who have disclosed wrongdoing, particularly those who are suffering any form of detriment as a result. The name, position title, location and contact details should be included in references to that position in the procedures.

The function of the Whistleblower Support Officer should be separate from the investigation function. The role of the Whistleblower Support Officer is to

- provide moral and emotional support
- provide career advice to the whistleblower
- advise the whistleblower about any resources available in the organisation to handle any concerns that they might have as a result of reporting
- appoint a mentor, confidant or other peer support officer to assist the whistleblower



throughout the process

- refer the whistleblower to the organisation's employee assistance program or arrange for other professional counselling
- generate support for the whistleblower in their work unit (if appropriate)
- be alert to possible victimisation or harassment of whistleblowers and report any suspicions to the Whistleblower Report Coordinator
- maintain contact with all identified whistleblowers in the organisation and monitor their progress
- negotiate with the whistleblowers and their relevant supervisor a formal end to their involvement in the support and protection program, when it is agreed that they no longer need assistance.

Persons who have disclosed wrongdoing or are contemplating such disclosure should be formally advised that they will be provided with access to any necessary professional support, such as stress management or counselling services, or legal or career advice, which might become necessary as a result of the reporting process. The access point for this assistance should be the nominated Whistleblower Support Officer.

All managers in the organisation should be under an active obligation to notify the Whistleblower Support Officer if they believe any staff member is suffering any detriment as a result of disclosing wrongdoing.

### **Risk assessment**

Whenever any manager in this organisation receives a report of wrongdoing, that person is under an obligation to consider the likelihood of the person making the report suffering some form of reprisal as a result. If relevant, that assessment should be extended to any other witnesses who are likely to be involved in the investigative process.

It is the responsibility of that manager to assess the actual and reasonably perceived risk of victimisation or unlawful discrimination. If that risk is significant, a risk assessment must be undertaken.

The process of risk assessment must include input from the person making the report. Having assessed the risk, that manager is responsible for notifying the Whistleblower Report Coordinator. Consistent with the level of assessed risk, the organisation will implement arrangements to protect the staff member who made the report and, where practicable, their anonymity.

Where necessary, the risk-assessment process might need to be repeated.

At all stages in this process, the organisation will keep the staff member informed. Also, all managers in this organisation have an active obligation to report to the Whistleblower Report Coordinator 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 might have themselves that action against a staff member in reprisal to a report is occurring.

### **Information and advice**

Any member of staff who makes a bona fide disclosure of wrongdoing is entitled to feedback. This feedback will include the following.

At the outset

- acknowledgment of receipt of the disclosure, as soon as possible but, in any event, within two weeks
- the time frame within which they will be advised of action to be taken
- the name and contact details of a person who will be able to advise them on what is happening—most appropriately the Whistleblower Support Officer.

After a decision is made as to how their disclosure will be dealt with

- the action that will be taken on their disclosure
- likely time frames for any investigation
- protections that will apply
- procedures in place to manage confidentiality; if confidentiality is unlikely to be maintained, the reporter should be advised and asked whether the reporter wishes to proceed with the report
- the resources available within the organisation to handle any concerns that they might have arising from the process of reporting wrongdoing, including the contact details of the Whistleblower Support Officer
- external regulatory or integrity agencies that they may access for support if they consider that they need support outside the organisation.

During the course of any investigation

- the ongoing nature of the investigation
- progress and reasons for any delay
- advance warning if their identity is to be disclosed.

At the completion of any investigation

- sufficient information (preferably in writing) to demonstrate that adequate and appropriate action was taken and/or is proposed in respect of their disclosure and any systemic issue brought to light
- advice as to whether s/he will be involved in any further matters—for example, disciplinary or criminal proceedings.

Within 90 days of any disclosure, the discloser will be informed of the action taken, or proposed, as a result of the disclosure, and the reasons for this decision. If the action has not been finalised within 90 days, the discloser will be informed when the proposed action is completed.

## **Preventing and remedying detrimental action**

### **Commitment to protect**

Persons who make disclosures have the right to request that the organisation take positive action to protect those persons against reprisals.

### **Protection mechanisms**

The formal procedures for assisting persons making a report should include

- notifying whistleblowers that they should inform the Whistleblower Report Coordinator or the CEO immediately of any reprisal action
- reminding all managers in the organisation that they have an active obligation to notify the Whistleblower Report Coordinator or the CEO of any allegations they receive that indicate action against a staff member in reprisal to a report is occurring
- all managers in the organisation have an active obligation to report any suspicions

they might hold themselves that reprisal action against a staff member is occurring.

Where the Whistleblower Report Coordinator becomes aware of reprisal action against a whistleblower, the Whistleblower Report Coordinator will

- take immediate steps to ensure a senior and experienced officer who has not been involved in dealing with the initial report will investigate the suspected reprisal
- transmit the results of that investigation to the CEO for a decision
- take all possible steps to protect the reporter or internal witness
- where it has been established that reprisal action is occurring against a whistleblower, all steps possible must be taken to stop that activity and protect those parties
- appropriate disciplinary or criminal action will be taken against anyone proven to have taken any action in reprisal for the making of a report.

The reporter should be kept informed of the progress of the investigation and the outcome.

The CEO may issue specific directions to assist in the whistleblower's protection from any of the actions mentioned above. The nature of the action is dependent upon the circumstances and seriousness of the reprisals that the whistleblower is likely to suffer. The possible action that could be taken includes

- issuing warnings to those alleged to have taken detrimental action against the whistleblower
- relocating the whistleblower or the subject officer within the current workplace
- transferring the whistleblower or the subject officer to another position to which the whistleblower or they are qualified
- granting the whistleblower or the subject officer a leave of absence during the investigation of the disclosure.

The actions listed above will be done only with the agreement of the whistleblower, the Whistleblower Report Coordinator and the Whistleblower Support Coordinator. The Whistleblower Report Coordinator will make it clear to other staff that this action was taken at the whistleblower's request, with management support and that it is not a punishment.

Where another staff member comes forward as an internal witness to assist in the handling of a whistleblower report, and that person is threatened with or suffers some form of retaliation, that person is entitled to the same protection as outlined above.

### **Compensation or restitution**

Where retaliation against a whistleblower or internal witness has been proven, the organisation will consider the payment of compensation, restitution or the making of a formal apology.

### **Exit and follow-up strategy**

Where a report of wrongdoing has been actioned, the Whistleblower Support Officer, in consultation with the Whistleblower Report Officer, will develop and implement a plan for the monitoring of the wellbeing of the reporter (or internal witness, if appropriate) including a clearly defined exit strategy. The reporter (or internal witness) will be consulted as to the level and the nature of ongoing support.