

E. AN INTEGRATED ORGANISATIONAL APPROACH

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

Investigator

As outlined throughout this guide, the three major objectives of a whistleblowing program are to encourage employee reporting of wrongdoing; ensure effective assessment, investigation and action of reports; and support and protect whistleblowers. While these aims must be underpinned by organisational commitment to the program, as described in Section A, our research has also confirmed the lessons from the previous sections that the effective operation of a whistleblowing program relies on a positive workplace culture and shared responsibilities, supported by dedicated resources.

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

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

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

E1. CLEAR ORGANISATIONAL MODEL FOR SUPPORT

Checklist items

- Clear information about the support strategies employed by the organisation (that is, 'standing', 'devolved', 'case-by-case').
- Clear understanding of whistleblowing-related roles and the responsibilities of key players, internal and external to the organisation.
- Operational separation of investigation and support functions.
- Clear authority for support personnel to involve higher authorities (CEO, audit committee and external agencies) in whistleblower management decisions.

FIGURE 5.1

‘Standing program’

This model includes a permanently staffed internal witness support unit to coordinate protection and support. This model is typical of some larger agencies. The shaded boxes indicate the primary network of responsibility for support.

As discussed in Section A3, resources are a key indicator of organisational commitment to any program. All agencies face the challenge of identifying what level of resources is commensurate with need, depending on the type of program chosen. Our research identified three broad choices of organisational model for the development of the internal witness support strategies that form the missing heart of most current programs. Figures 5.1 and 5.2 summarise the first two choices.

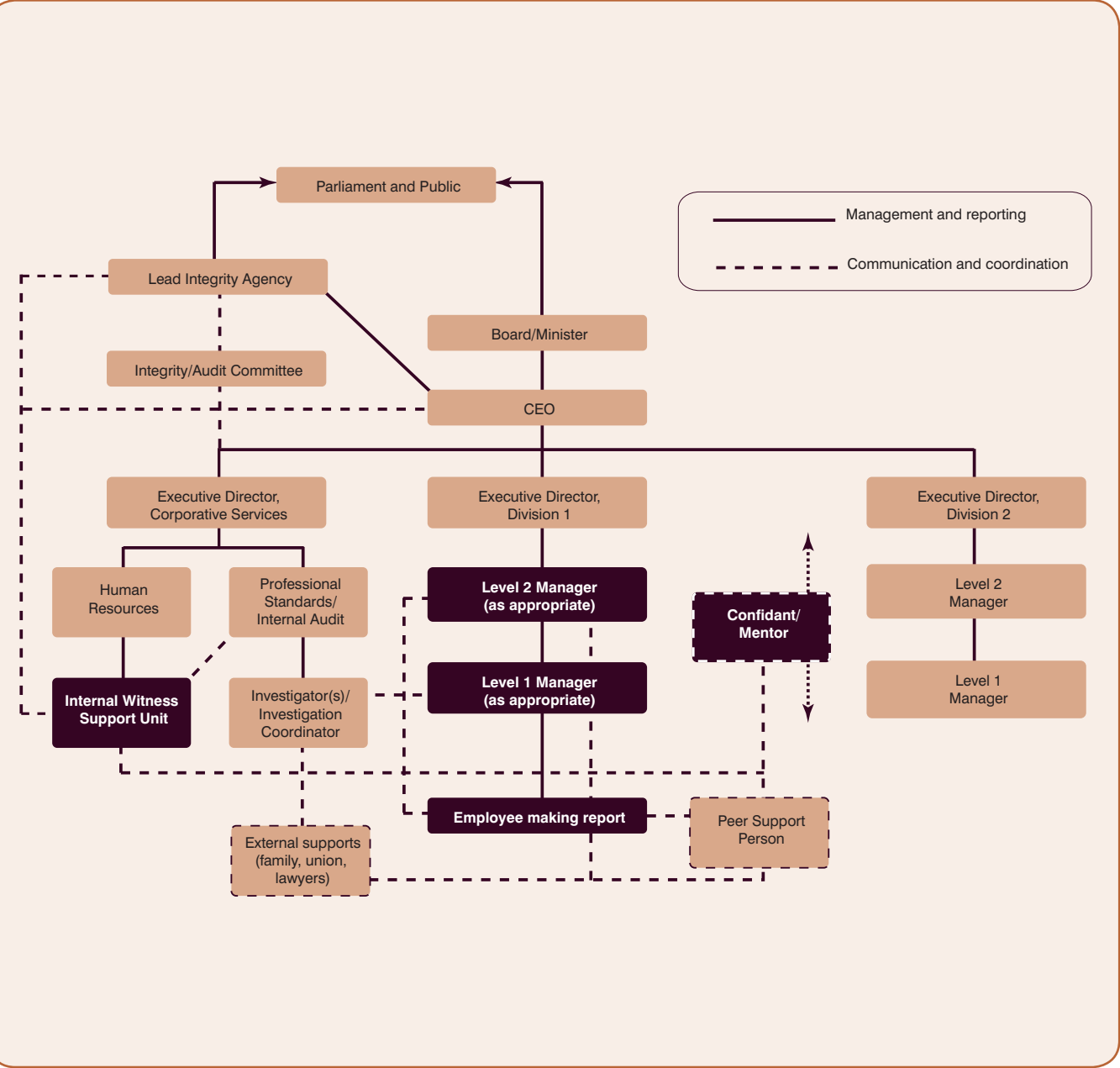
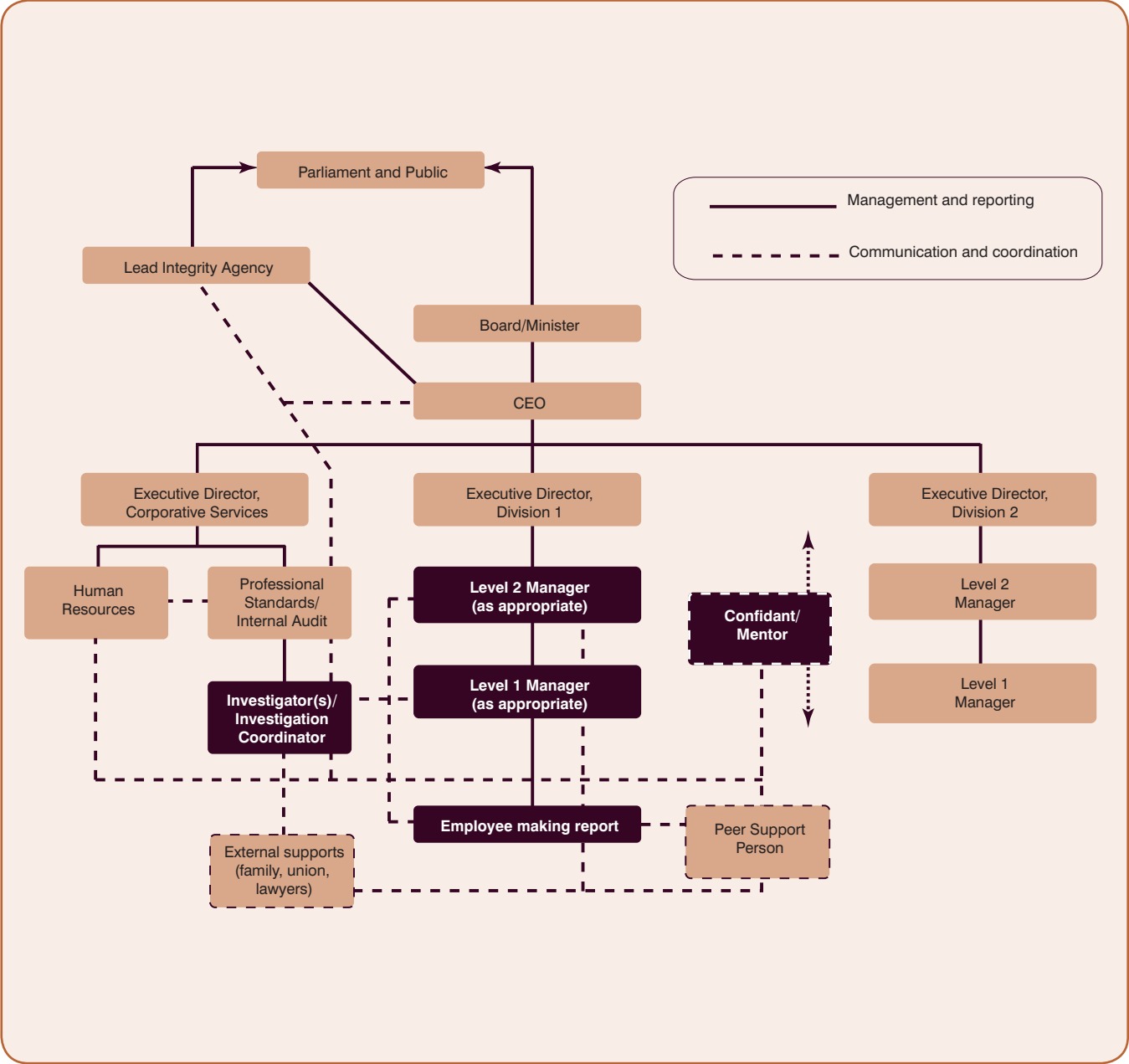


FIGURE 5.2

‘Devolved program’

This model does not include a permanently staffed internal witness support unit, but assumes that the professional standards area of the organisation will provide coordination. This model is similar to those found in mid-sized agencies. The solid box around the ‘confidant’ indicates a more intensive and structured role than in the standing program.



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

Other features of communication and reporting implicit in any of the programs are mentioned below. All three models presume a sharing of support responsibilities across various parts of the organisation, as well as external lines of communication (which are likely to become more significant and direct the less formal is the program). The typical roles of a ‘confidant’ and a ‘peer support’ person were described in Section D1.

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

Agencies need to determine a target case load for anticipated delivery of support, based on reliable evidence of reporting patterns within their organisation. (An associated issue is the need to anticipate the impact of changes in government policies on whistleblowing, particularly changes in legislation.) As previously reported, in the case-study agencies, perhaps only 1.3 per cent of all public interest whistleblowers were receiving organised support at the time of being surveyed (Brown and Olsen 2008a:208–12). This is despite the fact that, across the case-study agencies, on average, 20 per cent of whistleblowers went on to report having been treated badly by management or colleagues (giving an estimate in the order of 7700 individuals across the whole Australian public sector). While the estimated size of the 'at risk' population can be further refined in various ways, on any analysis the gap between the number of employees provided with organised support and the likely number of whistleblowers in need was very large.

For the purposes of estimating target need, agencies can use empirical research such as that presented in this report to identify the number of employees believed to be reporting wrongdoing, as well as the proportion currently experiencing negative outcomes. As a rough estimate, for example, our research shows that 12 per cent of all employees in an average agency reported public interest wrongdoing over a two-year period (Brown et al. 2008b:38, Figure 2.2), and on average 22–25 per cent of those perceived themselves as having been mistreated (Smith and Brown 2008:123, Figure 5.1).

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

CLEAR UNDERSTANDING OF ROLES AND RESPONSIBILITIES

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

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

Figure 5.3

Key responsibilities for positive reporting climate

Table 1: Key ingredients of a positive reporting climate

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

X indicates where primary responsibility for this issue lies at the present time.
x indicates where key additional/supplementary responsibilities lie.

Source: Brown et al. (2004).

Figure 5.4 provides a further example of the roles and responsibilities of key players in a 'standing program'. Organisations can use this table to identify key officers who are responsible for ensuring all staff who report wrongdoing are supported and protected.

Figure 5.4

Roles and responsibilities of key players

	Senior managers	Managers and supervisors	Specialist area	All staff
Leading by example to create an organisational culture that encourages, values and supports disclosing	✓	✓		
Ensuring that strategies to prevent public interest wrongdoing are included in the organisational business plan so that they are treated as an integral part of work activities	✓			
Ensuring that procedures for making, receiving and managing PIDs are in place and evaluated on a regular basis	✓		✓	
Ensuring employees have access to information on your organisation's policy and reporting options	✓	✓		
Receiving PIDs made orally or in writing	✓	✓	✓	
Forwarding all PIDs and supporting evidence to your organisation's specialist area	✓	✓		
Supporting disclosers	✓	✓	✓	✓
Linking the discloser to other support mechanisms	✓	✓	✓	
Identifying and addressing any risks of reprisal that the discloser may face	✓	✓	✓	
Ensuring that PIDs are addressed quickly and effectively	✓	✓	✓	
Taking all reasonable steps to ensure that disclosers are not subject to reprisals or any form of detrimental action	✓	✓	✓	
Ensuring that the rights of those who are the subject of a PID are protected and natural justice is accorded	✓		✓	
Keeping confidential the identity of the discloser and subject(s) of the PID	✓	✓	✓	✓
Deciding on what appropriate action to take following a PID	✓	✓	✓	
Ensuring that all involved in conducting investigations understand the principles of the WP Act	✓		✓	
Taking action following the outcome of any investigation or review, including taking any disciplinary or management action required	✓	✓	✓	
Implementing organisational change necessary as a result of a PID	✓	✓	✓	
Reporting offences to the appropriate authorities, particularly criminal offences to the police and official misconduct to the CMC	✓		✓	
Establishing clear lines of authority and accountability	✓	✓		
Implementing staff awareness and training		✓	✓	
Disclosing public interest wrongdoing	✓	✓		✓
Identifying areas where opportunities for public interest wrongdoing may occur and/or management systems are inadequate	✓	✓	✓	✓
Reporting on the number of PIDs received each year and their outcomes	✓		✓	

Source: Crime and Misconduct Commission et al. (2009).

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

Some evidence of the rationale for this principle is found in the first report and noted in Section D1 dealing with sources of internal witness support. It was notable that 'internal investigation' units ranked as a significant source of whistleblower support, but that their value tended to decrease when things became difficult (Brown and Olsen 2008a:215). This result follows the logical reality that, in many instances, while investigators might be highly sympathetic and a source of crucial advice to whistleblowers, they might not be able to substantiate the allegation or arrive at a conclusion that the whistleblower supports. Further, their responsibility is to move on to the next investigation or other duty, rather than provide ongoing support.

REPORTING LINES OF SUPPORT PERSONNEL

Figures 5.1 and 5.2 emphasise the importance of support personnel having clear and direct lines of reporting to whichever organisational levels are necessary to influence management decisions relevant to a whistleblower's welfare. This might include the need to recommend that certain action be stopped or initiated.

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

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

PRACTICAL ACTION

Agencies are encouraged to determine which whistleblowing support program, and scale of program, is commensurate with their needs depending on their case load. The key lesson from the first report—discussed in Section D1—is the desirability of organisations designing a proactive support program that is management initiated, based on a comprehensive system for tracking reports at all levels of the organisation so that all employees who report or provide information in relation to wrongdoing are quickly identified, and an assessment is made as to their need for support.

It is recommended that agencies both estimate the size of the at-risk population they wish to support and make a clear choice as to which model they are going to develop to provide that support, to allow appropriate costing and staffing decisions.

The sample procedures provide guidance on describing the roles and responsibilities of different individuals involved in an organisation's whistleblowing arrangements. Not surprisingly, this is highly contextual and depends on factors

such as the organisation's governance framework and size.

The separation of investigative and support functions is easiest to achieve in a standing program, where a permanent internal witness support unit can work with, but be kept institutionally separate from, an internal investigation unit.

Ensuring separation of functions becomes more complex where resources limit the location of whistleblower coordination staff to the same unit that performs other organisational integrity functions, or require a 'case-by-case' model. In these circumstances, the same principle needs to be observed to the maximum extent possible in an alternative form.

Public sector organisations are urged to ensure that their policies and procedures provide for direct lines of reporting between support personnel and a level of senior management that can influence future action. Similarly, support personnel need to have free authority to contact external agencies to ensure effective oversight of the organisation's handling of a case, where this might be required.

E2. SHARED RESPONSIBILITY FOR

WHISTLEBLOWER SUPPORT

Checklist items

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

These items reinforce the conclusions in Section D that responsibility for employee welfare—while not being left entirely to an employee's normal line-management chain—should not be removed from the duties of an employee's normal supervisors, unless circumstances positively require other arrangements.

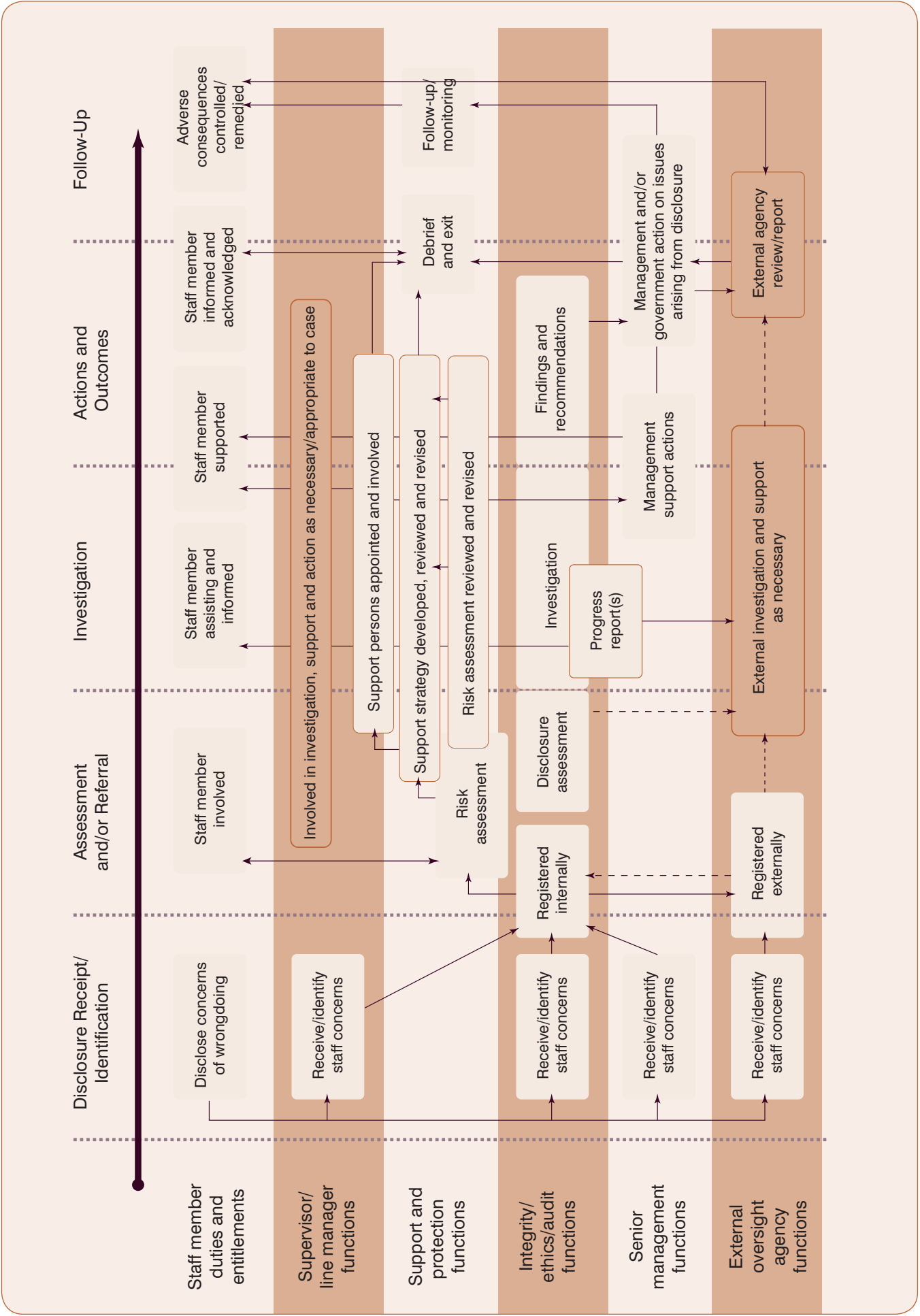
As part of the necessary sharing of responsibility, however, the evidence regarding the frequent inability of agencies to resolve reprisal allegations means that external integrity agencies also need to be systematically included in the information flow. Where necessary, this includes decisions regarding the management of whistleblowing cases.

PRACTICAL ACTION

Organisations are encouraged to document a clear process for who is responsible for communicating with external agencies, internal centralised units, management, other support persons and the whistleblower, and when and how frequently this communication should occur. Building on the previous section, Figure 5.5 outlines some of the shared responsibilities involved in a typical case, drawing on the case-management flow diagrams of a number of agencies.

FIGURE 5.5

Shared case management



E3. EMBEDDED POLICIES AND PROCEDURES

Checklist items

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

These items reinforce the elements in Section A2 regarding organisational procedures, Section C1 regarding integrated disclosure tracking and assessment systems, and Sections D1 and D3 regarding the integration of whistleblower support into other policies dealing with organisational wellbeing and employee welfare.

Section A2 noted the tendency for organisations to develop their whistleblowing program and its associated policy and procedures as a new 'add on' or layer placed over the top of existing procedures. Often these procedures are developed at different times (for example, first procedures on the code of conduct, others on external agency reporting requirements, then another for fraud and criminal investigations, then others for other investigations).

Unless an integrated approach is taken, there remains a risk that whistleblowing policies will simply be ignored—for example, through the use of alternative procedures to investigate wrongdoing rather than triggering the protection requirements central to whistleblowing responsibilities. A number of agencies cited the use of alternative 'tags' and investigation paths for disclosures, including their informal treatment, as alternatives to acknowledging them as public interest disclosures under whistleblowing legislation.

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

PRACTICAL ACTION

Public sector organisations are encouraged to develop a simple, consolidated set of procedures relating to organisational accountability, integrity and case handling that integrates whistleblowing roles and responsibilities with those related to the code of conduct, investigation of matters or referral to external agencies.

Finally, it is suggested that organisations demonstrate to managers that their response to reporters and whistleblowing is linked to their responsibility as public employers to provide their staff with safe, healthy workplaces, free of wrongdoing and of detrimental action, in the interests of a professional public sector, a climate of continuing high job satisfaction and equality of employment opportunity for employees who speak up about possible wrongdoing.

SAMPLE POLICIES AND PROCEDURES

Roles and responsibilities

Roles and responsibilities of the executive and senior management.

The members of the executive and senior management of the organisation are responsible and accountable for

- leading by example to create an organisational culture that gives a clear message that making reports of wrongdoing is encouraged and valued and public interest wrongdoing is not acceptable
- ensuring that strategies to prevent public interest wrongdoing are included in the organisational business plan so that they are treated as an integral part of work activities
- identifying areas where opportunities for public interest wrongdoing might occur and/or management systems are inadequate
- ensuring that procedures for making, receiving and managing reports of wrongdoing are in place and evaluated on a regular basis
- ensuring all employees have access to information on the relevant legislation and reporting channels (both internal and external) for public interest wrongdoing
- ensuring that all employees and contractors involved in managing reports of wrongdoing understand the principles of the relevant legislation, in particular confidentiality
- ensuring that internal disclosures are addressed quickly and effectively
- taking all reasonable steps to ensure that employees who make reports of wrongdoing are not subject to reprisals or any form of detrimental action
- ensuring that the rights of those who are the subject of a report of wrongdoing are protected and natural justice is accorded
- taking action following the outcome of any investigation or review, including taking any disciplinary or management action required
- implementing any organisational change necessary as a result of a disclosure
- reporting offences to the appropriate authorities, particularly that any criminal offence should be reported to the police
- supporting staff who make reports of wrongdoing
- referring to relevant internal procedures for reporting, ensuring employees have access to information on the relevant legislation, and reporting channels in the organisation.

Roles and responsibilities of managers, supervisors and team leaders.

Managers, supervisors and team leaders are responsible and accountable for

- leading by example to contribute to an organisational culture that gives a clear message that making reports of wrongdoing is encouraged and valued and public interest wrongdoing is not acceptable
- receiving reports of wrongdoing made in person or in writing (whether the reporter identifies themselves or is anonymous)
- supporting staff who make reports of wrongdoing and linking them to other support mechanisms
- identifying and addressing any risks of reprisal that the discloser might face
- ensuring that employees who make reports of wrongdoing are not subject to reprisals or any form of detrimental action
- keeping confidential the identity of the reporter and any officer against whom the report was made
- establishing clear lines of authority and accountability
- ensuring all employees have access to information on the relevant legislation and reporting channels (both internal and external) for public interest wrongdoing
- implementing staff awareness and training
- identifying areas where opportunities for public interest wrongdoing might occur and/or management systems are inadequate.

Roles and responsibilities of staff members.

All staff members are responsible and accountable for

- reporting matters where there is evidence that shows or tends to show public interest wrongdoing
- ensuring the success of the relevant legislation within their workplace
- identifying areas where opportunities for public interest wrongdoing might occur and/or management systems are inadequate
- supporting those who have made reports of wrongdoing
- keeping confidential the identity of the reporter and any officer against whom the report was made.