

# INTRODUCTION

Whistleblowing is the 'disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action' (Miceli and Near 1984).

This guide sets out results from four years of research into how public sector organisations can better fulfil their missions, maintain their integrity and value their employees by adopting a current best-practice approach to the management of whistleblowing.

Whistleblowing is the 'disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action' (Miceli and Near 1984). This guide focuses especially on

- the processes needed for public employees and employees of public contractors to be able to report concerns about wrongdoing in public agencies and programs
- managerial responsibilities for the support, protection and management of those who make disclosures about wrongdoing, as part of an integrated management approach.

The guide is designed to assist with the special systems needed for managing 'public interest' whistleblowing—where the suspected or alleged wrongdoing affects more than the personal or private interests of the person making the disclosure. As the guide explains, however, an integrated approach requires having good systems for managing *all* types of reported wrongdoing—including personal, employment and workplace grievances—not least because these might often be interrelated with 'public interest' matters.

There are four reasons why it is important for public sector managers to recognise, and properly manage, the role of whistleblowing in their organisation

- it is increasingly accepted that employee reporting is often the most effective and fastest way for senior management of organisations to become aware of problems in their organisation
- if organisations do *not* manage whistleblowing effectively, it is now well known that complaints are more likely to be taken outside the organisation, including into the public domain, leading to greater conflict, embarrassment and cost
- organisations that support employees in fulfilling their duty to report concerns are more likely to become known as good workplaces and employers of choice, while organisations who do not are more likely to become liable for failing to provide employees with a safe, healthy and professional working environment
- public sector agencies are increasingly subject to specific statutory obligations to manage whistleblowing to a high standard, as part of their jurisdiction's public integrity systems.

In Australia, requirements for improved internal disclosure procedures (IDPs), including better provision for employee protection and support, are set out in the *Public Interest Disclosure Acts* of all State and Territory jurisdictions. This includes new *Public Interest Disclosure Acts* passed in Queensland and New South Wales in September and October 2010, and new legislation promised at the Commonwealth level.

These developments have also led and been informed by parallel recognition of the importance of whistleblowing for the management of all organisations, including in the business and civil society sectors. In 2003, the *Australian Standard on Whistleblower Protection Programs for Entities* (AS 8004-2003) was published; and in 2004, whistleblower protection provisions were inserted in Part 9.4AAA of the *Corporations Act 2001* (Cwlth). Like public sector provisions, these are subject to review and are likely to be upgraded.

With these imperatives in mind, this guide sets out a framework that public sector agencies—large and small—can use to develop and implement improved IDPs for their own organisation.

## DEVELOPMENT OF THE GUIDE

The guide was produced as part of an Australian Research Council-funded Linkage Project, 'Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations' (2005–09).

The project collected data from more than 300 Commonwealth, State and local agencies in Australia, including individual survey responses from more than 10,000 public employees, managers and case-handlers (persons involved in the investigation and management of reported wrongdoing). Many of the empirical data were reported in *Whistleblowing in the Australian Public Sector* (Brown 2008), published by the Australia and New Zealand School of Government and ANU E Press ([http://epress.anu.edu.au/whistleblowing\\_citation.html](http://epress.anu.edu.au/whistleblowing_citation.html)).

In addition to the empirical data already reported, this guide presents new research based on the experience of 16 Commonwealth, State and local case-study agencies who participated in depth throughout the project. The features of these agencies and the research undertaken are set out in Appendix I. The additional research underpinning the guide includes

- further quantitative analysis of empirical data, including extensive comparative analyses of data from the 16 case-study agencies
- qualitative data obtained from 92 interviews of internal witnesses, managers, investigators and support staff from the case-study agencies, as well as the free text responses to the larger surveys
- results of a series of workshops attended by the representatives of the case-study agencies and partner organisations over a four-year period.

Earlier outputs based on this research, including a draft version of this guide released at the second Australian Public Sector Anti-Corruption Conference (Brisbane, July 2009), have already informed the development of official procedures and advice in a number of Australian governments (see, for example, Crime and Misconduct Commission et al. 2009; NSW Ombudsman 2009). Many valuable comments were received on the draft, as well as the additional research and analysis that inform this guide.

The result is a new framework based on the practical experience of a diverse range of organisations. The framework will help organisations understand and put in place the five elements of a best-practice whistleblowing program

- A.** organisational commitment to good management of whistleblowing
- B.** facilitating reporting
- C.** assessment and investigation of reports
- D.** internal witness support and protection
- E.** an integrated organisational approach.

This guide should be used to inform the way that organisations implement the statutory objectives of most public interest disclosure legislation

- to encourage public officials to report wrongdoing within or by their organisation, to those who can effect action
- to ensure effective action, including investigation, in response to those reports
- to ensure that employees who report wrongdoing are supported and protected from adverse consequences that can flow from having fulfilled their duty to report.

The guide is structured to provide public sector organisations with three things.

### 1. Program framework and checklist

Within the five fundamental elements of a whistleblowing program listed above, the guide breaks down into a number of sub-elements and a checklist of the key items that should be addressed by any organisation wishing to develop and implement a successful program.

The checklist is set out at the end of this Introduction. The guide then presents and discusses each sub-element along with the checklist items.

The framework and checklist evolved from comparison of the main institutional elements and strategies that made up different organisations' approaches to the management of whistleblowing. This commenced at a symposium held in Canberra in July 2005, by the project and the Australia and New Zealand School of Government.

A first-draft framework was developed based on 24 items used in the assessment of the comprehensiveness of written agency procedures (Roberts 2008:245). These included the 14 items suggested by the checklist in the *Australian Standard on Whistleblower Protection Programs for Entities* (AS 8004-2003).

The framework was then developed through discussion among case-study agencies and partner organisations at three case-study workshops, held in July 2007, July 2008 and September 2008. These workshops discussed data relevant to the performance of agencies' approaches, and shared experience of those approaches. The final framework and checklist reflect the collective experience of a large body of research and a diverse group of agencies.

### 2. Commentary and explanation

Under each element and sub-element, the guide summarises the key relevant issues and lessons from the research, including the experiences of agencies, and insights from the 92 interviews with whistleblowers, managers and case-handlers.

A key philosophy underpinning the guide is to maximise and properly manage whistleblowing by adopting a policy of 'if in doubt, report', to encourage the reporting of wrongdoing. In practice, this translates into policies that do not filter or set artificial administrative thresholds for receiving reports, but rather encourage staff to bring forward any issue that is concerning them. The research confirms that it is better for organisations to receive too much information about wrongdoing than too little, or too late.

A second key philosophy—and a direct corollary of an ‘if in doubt, report’ approach—is that organisations must accept their obligations to take reports seriously, respond appropriately and professionally (even if the outcome is no action), and support and protect persons who come forward with reports of wrongdoing.

This last area was revealed by the research to be the element with which most organisations continue to struggle (Brown and Olsen 2008a). In line with strengthened statutory requirements, the guide is aimed at helping organisations realise the potential for developing improved tools and strategies for ensuring the health, safety and wellbeing of officials who fulfil their public duty to report wrongdoing.

### 3. Practical action

Each section of the guide lists practical actions that agencies can take to address the issues raised. Practical action includes developing, promulgating and implementing better procedures, which the research showed were directly related to employees having higher confidence in the likely response of management to disclosures, as well as to better substantive outcomes (Roberts 2008:255–8).

Some sections of the guide therefore also provide diagrams, flow charts and sample language for written procedures, drawing on approaches taken by the agencies who participated in the research and, in particular, the NSW Ombudsman’s Office and the Crime and Misconduct Commission. These sample procedures are not intended to be adopted word-for-word by organisations, but used as a starting point for the drafting or redrafting of policies and procedures, in line with organisations’ different legislative requirements, operating environments and needs.

The authors thank the case-study organisations for their pivotal role in the production of this guide, and trust it will help lead to better outcomes for the bulk of organisations committed to public accountability, integrity and organisational justice.

## THE CHECKLIST:

### REQUIRED ELEMENTS FOR A WHISTLEBLOWING PROGRAM

#### A. Organisational Commitment

##### A1. Management commitment

- Clear statements by senior management of the organisation’s support for the reporting of wrongdoing through appropriate channels (‘if in doubt, report’), including commitments to
  - take credible and appropriate action upon receipt of a whistleblowing report
  - remedy any confirmed wrongdoing
  - support whistleblowers.
- Commitment to the principles of whistleblowing among first and second-level managers, including
  - understanding of the benefits and importance of whistleblowing mechanisms

- knowledge of and confidence in whistleblowing policies.
- Broad staff confidence in management responsiveness to whistleblowing.

#### **A2. Whistleblowing policy**

- Easy to comprehend whistleblowing policy, including guidance on procedures, relationship with other procedures and legal obligations.
- Broad staff awareness of the whistleblowing program and policy, including their responsibility to report possible wrongdoing.

#### **A3. Resources**

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

#### **A4. Evaluation and engagement**

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

### **B. Facilitating Reporting**

#### **B1. Who may report wrongdoing?**

- Clear and comprehensive approach to including all key categories of organisation members (for example, employees, contractors, employees of contractors, volunteers) in the program.

#### **B2. What should be reported?**

- Clear procedures and advice to staff on
  - the types of wrongdoing that should be reported
  - appropriate reporting points for all different types of wrongdoing (including grievances as opposed to public interest disclosures)
  - the level of information required/desired in a report.
- Clear advice that staff
  - are not protected from the consequences of their own wrongdoing by reporting it, nor for deliberately providing false or misleading information
  - may nevertheless seek and be granted immunity from consequences from their own less serious wrongdoing, when reporting other more serious wrongdoing.

#### **B3. Multiple reporting pathways**

- Clear advice on *to whom* and *how* whistleblowing reports should be made, including
  - *internal* reporting paths
  - *alternatives* to direct line reporting (that is, guidance on when staff should consider reporting outside the normal management chain)

- **external** reporting paths, including external (contracted) hotlines and relevant regulatory or integrity agencies, and when these should be approached in the first instance.
- Clear advice regarding disclosures to the media.

#### **B4. Anonymity**

- Clear advice that anonymous reports will be acted upon wherever possible, and about how anonymous reports/approaches may be made.

### **C. Assessment and Investigation of Reports**

#### **C1. Identification and tracking of reports**

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

#### **C2. Assessment procedures**

- Management procedures and skills for differentiating, as appropriate, between different types of wrongdoing (including grievances), and initiating appropriate action.
- A flexible approach to the types, level and formality of investigations to be conducted, including clear criteria for when no further action is required.
- Early and continuing assessment of the risks of reprisal, workplace conflict or other adverse outcomes involving whistleblowers or other witnesses.

#### **C3. Confidentiality**

- Commitment to the confidentiality of whistleblowing reports to the maximum extent possible, including
  - procedures for maintaining the confidentiality of whistleblowers, persons against whom allegations have been made, and other witnesses to the maximum extent possible
  - clear advice about possible limits of confidentiality
  - procedures for consulting and, wherever possible, gaining consent of whistleblowers prior to any action that could identify them, including to external agencies.
- Procedures for determining when confidentiality cannot be ensured, and active strategies for supporting employees and managing workplaces where confidentiality is not possible or cannot be maintained.

#### **C4. Equity and natural justice**

- Clear procedures for the protection of the rights of persons against whom allegations have been made, including appropriate sanctions against

- false or vexatious allegations
- unreasonable breaches of confidentiality.
- Clear advice to managers about to whom, when and by whom information about allegations of wrongdoing need be given, for reasons such as natural justice.

## **D. Internal Witness Support and Protection**

### **D1. Whistleblower/internal witness support**

- 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 involve
  - 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.

### **D2. Information and advice**

- 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 whom 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 may be accessed for support.

### **D3. Preventing and remedying detrimental action**

- Clear commitment that the organisation will not undertake disciplinary or adverse actions, or tolerate reprisals by anyone in the organisation including managers, as a result of disclosures.
- 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.

#### **D4.Exit and follow-up strategy**

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

### **E. An Integrated Organisational Approach**

#### **E1. Clear organisational model for support**

- Clear information for managers and staff about the support strategies employed by the organisation (that is, 'standing', 'devolved', 'case-by-case').
- Clear understanding of whistleblowing-related roles and responsibilities of key players, internal and external to the organisation.
- Operational separation of investigation and support functions.
- Clear and direct lines of reporting from support personnel to audit/integrity committee and/or CEO, and external agencies.

#### **E2.Shared responsibility for whistleblower support**

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

#### **E3.Embedded policies and procedures**

- 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.