

## 8. Investigations: improving practice and building capacity

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### Introduction

Whistleblowing provokes many responses from individuals in organisations and from organisations as a whole. All the evidence on whistleblowing in the Australian public sector, reviewed so far, shows two main responses to be of overwhelming importance in shaping the outcomes from any public interest whistleblowing incident:

- how well employee reports of wrongdoing are investigated and (where necessary) acted on
- how well employees who disclose wrongdoing are managed, supported and (where necessary) protected, during and after the investigation process.

This chapter and the next address, in turn, each of these crucial issues.

Proper investigation of workplace complaints and concerns is a cornerstone of the practical implementation of whistleblowing legislation, resulting in reports being dealt with appropriately and the facts of the situation discovered. As seen in Chapters 2 and 5, many whistleblowing cases are successfully investigated by the agencies involved. The results from the employee survey indicated that more than half (56 per cent) of public interest whistleblowers believed that their report was investigated and, of these, the same proportion believed the investigation result led to a positive change in their organisation. Given that not every report about wrongdoing is correct, and that even if correct, many reports might not be capable of substantiation for evidentiary or other reasons, these results are seen as broadly positive.

The previous chapters, however, also provided evidence that some investigations do fail or fail to occur when they should. A worrying indicator was the substantial proportion of whistleblowers who simply did not know whether any investigative action was taken. Frequently, the organisation's failure to inform its employees of the resulting action could be a sign that no effective investigation has occurred—and, even if this is not the case, it is likely to contribute to that impression within the organisation. In Chapter 3, the general confidence of employees that a disclosure will be competently investigated and acted on emerged as pivotal to whether or not they would bother reporting their concerns. It is also reasonable to assume that widely held confidence in the thoroughness, fairness and professionalism of investigative responses will help

dissuade employees from trying to use whistleblowing processes for other purposes.

From these results, the conduct and management of internal investigations represent major, continuing challenges for public sector agencies. This chapter focuses on evidence gathered about three main aspects of investigating wrongdoing: who conducts the investigations, their level of training and how the investigatory capacity of agencies might appear to impact on current outcomes from whistleblowing. Fundamentally, investigations are fact-finding processes that involve gathering information, interviewing relevant people and preparing a report for action (Ferraro and Spain 2006). Sennewald (1991:3) describes an investigation as 'the examination, study, searching, tracking and gathering of factual information that answers questions or solves problems [and] a comprehensive activity involving information collection, the application of logic, and the exercise of sound reasoning'. Investigation needs arise within agencies for a range of purposes, not restricted to whistleblowing reports. As indicated in Chapter 2, a range of triggers exists by which information about internal wrongdoing comes to light. Whistleblowing is simply one of the most important, in which the interactions between investigators, management, informants and the attitudes of other employees to reporting become very complex.

When a report of wrongdoing is made in an organisation, it has the potential to trigger a number of investigations. The first of these is the primary investigation. In some circumstances, as seen in Chapters 4 and 5, the primary investigation might not resolve matters or there could be further complaints, causing the issue to be reviewed. This review, if undertaken, can result in a further internal investigation or an investigation from an external integrity agency. Further, as seen in Chapters 5 and 6, if the complainant suffers a reprisal there could be an independent investigation into that reprisal, as distinct from the original wrongdoing. For simplicity, this chapter looks on all these investigations as a whole, on the assumption that the basic skills, expertise and experience required are often very similar.

The first part of the chapter examines who conducts investigations on behalf of the agencies studied, confirming that a wide variety of internal organisational units and individuals and external resources are used. As we have seen, almost all disclosures are made internally and the responsibility for investigating reports of alleged wrongdoing rests primarily within the organisation, even if decisions are made to involve outside parties.

The results show that the complex matter of conducting investigations cannot be taken lightly nor can the skills required be taken for granted. Those responsible for carrying out internal investigations should be experienced and qualified investigators aware of the sensitivities of investigating workplace reports of wrongdoing. Less-qualified and less-experienced staff members need

active and continuing external guidance, training, support and management. Furthermore, agencies need to ensure that private companies and other external resources that they use are appropriately qualified to conduct investigations and that the other responsibilities that internal investigators often undertake do not fall through the cracks.

The need for appropriate expertise is underscored by evidence that not all management roles can be considered to be routinely compatible with investigation roles and that this impacts on the perceived quality of investigations. The data also point to the need for careful consideration of the way in which institutional responsibilities for investigations are configured. This includes the responsibility for managers who receive disclosures to automatically consult with specialists in their organisation, where available, and the need for more effective relationships between agencies and integrity agencies to help ensure that, wherever possible, the primary investigation of a disclosure is properly undertaken.

The second part of this chapter describes the training in investigation that is provided and/or required by the agencies, indicating considerable variation in what is required. The results give cause for concern in revealing a clear shortage of training in how to deal with disclosures and awareness on the part of many case-handlers and managers that they feel under-equipped to deal with whistleblowing. The degree to which current levels of training confer a sense of being able to deal with complex whistleblower reports is also examined. Not surprisingly, having professional training in investigation leads to more confidence, while informal training—which is found to be the most frequent form of training provided or required—leads case-handlers and managers to feel little more confident than the very substantial number with no training at all.

The analysis also identifies a number of relationships between the level of available training and other outcomes, in a manner that underlines the complexity of the issues. In terms of creating a working culture in which staff members feel comfortable about reporting, it appears that those with professional training are somewhat less negative and judgmental about whistleblowing. The knowledge and understanding of the issues that could be conferred by professional training appear to be associated with less harsh or stereotypical views about the usefulness of whistleblowing and the feasibility of managing whistleblowing incidents to a positive outcome.

Finally, the third section of the chapter examines whether the ‘investigatory capacity’ of agencies impacts on current outcomes from whistleblowing. The analysis examines differences, on a number of outcome measures, across 12 of the project’s case study agencies using a proxy measure of ‘investigatory capacity’. This examination indicates that investigatory capacity is indeed related to the likelihood of wrongdoing being reported in a given agency. This result

reinforces the importance of the institutional and training issues raised in the first parts of the chapter, demonstrating that those agencies that do not take steps to ensure their investigatory capacity is high are less likely to find their employees will be prepared to help bring known wrongdoing to light. These findings therefore reinforce the crucial importance of good investigation practice and capacity to the process of realising the benefits of whistleblowing.

## Who conducts investigations?

Workplace complaints are investigated using internal and/or external resources. Table 8.1 details who, within each organisation, conducts the investigations, based on data supplied by the agencies in response to the agency survey. Decisions by each agency about who should investigate naturally depend in part on the size of the agency and the range of resources at its disposal. Given the results in Chapter 4, it is not surprising that by far the majority of investigations are conducted internally—a fact that underlines the need for good internal processes and practices and well-trained professional staff, especially given the inherent risk of internal organisational conflict that goes with any whistleblowing report. External investigators are discussed later in the chapter.

**Table 8.1 Who investigates reports of wrongdoing? (per cent)**

Category	Percentage of agencies who use <sup>a</sup>
Senior manager(s) (eg., group/division heads)	59.2 (180)
CEO or equivalent	56.6 (172)
Human resources/equity and merit unit	50.7 (154)
Internal audit/fraud investigation unit	44.1 (134)
External government agencies (eg., police, ombudsman)	33.9 (103)
Staff grievance/appeals units	31.6 (96)
External audit/accounting firms	27.6 (84)
Other specialist investigators	25.9 (79)
Middle or junior managers (eg., branch/section heads)	23.0 (70)
Administrative review/legal units	20.4 (62)
Internal ethical standards/investigation units	20.1 (61)
Internal ombudsman/complaints	7.9 (24)
Quality-assurance units	5.6 (17)
External retired managers	5.6 (17)
Other	25.7 (78)

<sup>a</sup> Total exceeds 100 per cent as agencies were asked to indicate all those used.

Source: Agency survey: Q16 (n = 304).

## Internal investigators

About half of all agencies responded that senior managers, the CEO, human resource units and internal fraud and audit units had responsibility for conducting investigations. The term ‘investigate’ might also be interpreted to mean the person who has overall management of the investigation and/or

responsibility to ensure that it is conducted appropriately rather than the person who conducts interviews, collects evidence and writes the report.

Given the range of investigatory resources used, case-handlers and managers in the 15 case study agencies were asked who they thought was most appropriate to conduct investigations, as shown in Table 8.2. A high mean score is 'usually appropriate' and a lower mean score is 'rarely appropriate'. Specialist units such as internal audit, fraud-investigation and ethics units were considered the most appropriate, followed by a manager from 'another area' and human resource units. Not surprisingly, journalists and 'parliament' were only rarely considered to be appropriate. An overall significant difference was found ( $F(8, 6404) = 403.88, p \geq 0$ ) between these ratings.

**Table 8.2 Who case-handlers and managers think is most appropriate to conduct the investigation into employee reports of internal wrongdoing?<sup>a</sup>**

Unit or individual (mean and std deviation of rating)	Usually appropriate	Sometimes appropriate	Rarely appropriate
Internal audit, fraud, investigation or ethics unit (2.42, 0.61)	49.0% (353)	44.7% (322)	6.4% (64)
Manager from another area (2.14, 0.65)	29.0% (207)	55.8% (398)	15.1% (108)
Human resources/equity and merit unit (2.10, 0.65)	26.9% (192)	56.5% (403)	16.5% (118)
Supervisor of the area reported on (1.87, 0.70)	18.7% (133)	49.6% (353)	31.6% (225)
External government watchdog agency (1.86, 0.65)	15.0% (107)	55.9% (400)	29.1% (208)
Supervisor of employee who reports (1.83, 0.67)	15.6% (111)	52.2% (372)	32.3% (230)
CEO or equivalent (1.62, 0.69)	11.9% (85)	38.4% (274)	49.6% (354)
Parliament (1.14, 0.37)	0.8% (6)	12.6% (89)	86.6% (613)
Journalist/media (1.04, 0.22)	0.3% (2)	4.0% (28)	95.8% (676)
Other (2.20, 0.80)	43.3% (13)	33.3% (10)	23.3% (7)

<sup>a</sup> 'Valid' percentages are used—that is, the percentage of those who responded to each item rather than the total sample.

Sources: Case-handler and manager surveys: Q28 (n = 828, missing data in each cell).

To ascertain what underpinned these judgments, further analysis found that objectivity or 'social distance' was an important consideration reflected in respondents choosing organisational units or individuals whose role and responsibilities implicitly required objectivity—such as internal fraud investigation or human resource units. These units might also be expected to have the requisite training and knowledge to conduct investigations, although, as will be seen, that assumption is also questionable. The idea of distance is also reflected in respondents choosing 'a manager from another area'.

Appropriateness to investigate is not necessarily a static judgment, but it is likely to depend on such issues as the need for specialised knowledge in particular cases or on the increasing complexity of cases as they proceed. In other words, 'it depends' on the individual circumstances. This accounts for the frequency

with which 'sometimes appropriate' was endorsed. This is of particular note in the frequency with which it was seen as 'sometimes' appropriate for an investigation to be conducted by the 'supervisor of the area reported on' (49 per cent, 353), an 'external government watchdog agency' (56 per cent, 400), the 'human resources/equity and merit unit' (56 per cent, 403) or even the 'supervisor of the employee who reports' (52.2 per cent, 372). These results do not mean that the decision about who should investigate is arbitrary; rather, they suggest that criteria such as distance from the reporter (to ensure objectivity) and the investigator's role and responsibility (to ensure they have appropriate knowledge, qualifications or seniority) are primary considerations.

Comparison of Tables 8.1 and 8.2 also begins to point, however, to ways in which the choice of who is best to investigate can be constrained. In Table 8.2, the 'CEO or equivalent' did not rate highly in terms of frequency of appropriateness, in the view of case study agency case-handlers and managers. These were mostly large agencies with a wide range of resources. Possible reasons for this view include not just the availability of these other resources, but the fact that many CEOs are simply too busy to conduct detailed investigations and the desirability of separating investigation findings from decisions about management action. Once the CEO has investigated and reached a view, they might be less well placed to act dispassionately in instituting any action, without at least some appearance of partiality or prejudgment. If the CEO has done the primary investigation, there are also no options left for review of the outcome without heightened risk of conflict between the organisation and the whistleblower. The situation can also be little different if other senior managers, close to the CEO, are used, unless they and the CEO have a robust relationship and well-developed understanding of these sensitive differences.

Table 8.1, however, shows that, in general, public sector organisations do rely heavily on using their CEOs to investigate matters. This could reflect the circumstances that exist in smaller agencies, where other resources are less available, especially when combined with a CEO who takes whistleblowing seriously and is therefore prepared to give high priority to a matter. Nevertheless, these data do point to the likelihood that lack of resources and/or lack of a senior management's grasp of the need for a professional, differentiated approach could be impacting on the ability of many agencies to meet the highest possible investigation standards. As managers might have the responsibility to implement any changes as a consequence of an investigation, *prima facie* these are competing or even conflicting roles for investigators. The extensive overlap of roles indicates an area that agencies might have to review.

The evidence provided by respondents to the internal witness survey in the case study agencies further complicates this picture. Table 8.3 shows the level of satisfaction of those who reported wrongdoing, with the progress and the

outcome of the investigation, according to who conducted the primary investigation.

**Table 8.3 Satisfaction with the performance of the person who first dealt with the report**

Who dealt with the matter? (n)	How satisfied with progress? How satisfied with outcome?	
	1 = not at all satisfied 5 = extremely satisfied	
	Mean (SD)	Mean (SD)
Ethical standards unit (14)	2.64 (2.10)	2.36 (2.17)
CEO (or equivalent) (27)	2.04 (1.34)	2.15 (1.90)
Internal witness's supervisor (43)	1.95 (1.23)	1.77 (1.17)
Human resources/equity and merit unit (13)	1.92 (1.19)	1.77 (1.30)
Internal audit/fraud investigation unit (13)	1.92 (1.19)	1.62 (1.04)
Internal ombudsman/complaints unit (7)	1.86 (1.21)	1.86 (1.46)
Manager senior to the internal witness (62)	1.85 (1.38)	1.74 (1.61)
External government watchdog/investigation agency (9)	1.67 (1.22)	1.56 (1.33)
Union/professional association (6)	1.50 (1.22)	1.50 (1.22)
Other (5)	1.73 (1.27)	1.54 (0.69)

**Note:** Internal hotline/counselling service (3), member of parliament (2), external hotline or counselling service (0) and journalist (0) were either not nominated by any respondents or were nominated but not rated. An anomalous high rating for 'peer support officer' was excluded as these were very unlikely to have conducted the investigation.

**Source:** Internal witness survey: Q31, Q34, Q36 (n = 206, data missing).

A high mean score reflects high levels of satisfaction and a lower score reflects the opposite. Given that a score of 3 on both these items was needed to indicate the respondent was even 'somewhat satisfied' with progress or the outcome, the fact that all the mean values fell below this score indicated that, generally, there was a low level of satisfaction with the people who first dealt with the reports. As discussed in Chapter 5, however, this is likely to reflect the fact that internal witness survey respondents were generally less satisfied than respondents from a more random sample.

Satisfaction with the two aspects of the investigation (progress and outcome) closely paralleled each other, as one would expect, since the latter was likely to colour perceptions of the former. No significant difference in satisfaction was found according to who investigated the report ( $F(12,165) = 0.57, p > 0.85$ ). This again indicates that, depending on the situation, a wide variety of potential investigators could be appropriate for the task; or, conversely, whoever investigates faces a similar level of challenges. In either case, this lack of difference points to the need for adequate investigation expertise and knowledge to be available to a wide range of actors. One standardised approach, in terms of who conducts the investigation, is not necessarily required—but the diversity of actors increases the challenge of ensuring that consistently high standards of investigatory practice are achieved across individual organisations and across the public sector as a whole, regardless of who does the work.

Alongside this general finding, the differences in mean ratings in Table 8.3 provide food for thought. Internal witnesses appeared most satisfied with investigations conducted by an ethical standards unit. This could be explained by the professionalism that one would expect to be shown by an ethical standards unit, also indicating that the report is being taken seriously. It is more difficult to explain the lower level of satisfaction with investigations conducted by other specialist units (internal audit and investigation units or human resource units). Different perspectives are coloured in many instances, no doubt, by personal experiences, logistical considerations within agencies and the nature of the report. There could, however, also be some variation across different agencies in who works in these apparently similar organisational units, their specific scope and their governance arrangements. These results could indicate that the newer terminology of 'ethical standards' is indicating a more flexible or reflexive approach, better capable of getting to the bottom of whistleblowers' concerns than older, more functional units. Despite the fact that these are also specialist units, internal witnesses could perceive that their investigation is simply one of many issues being dealt with by these areas.

It remains salient, nevertheless, that internal witnesses, case-handlers and managers all agree that investigations are most often well handled if undertaken by at least some kind of specialist unit, whatever its precise title. This coincidence of view is especially significant given the evidence in Table 8.1 that such units are not necessarily the most present or relied on resource and the evidence from Chapter 4 indicating these units are only infrequently the first people to whom disclosures are made. Instead, the bulk of initial reports are made to first and second-level managers. It will be recalled from the previous chapter that although managers are generally supportive of whistleblowing, they often suffer from an acknowledged lack of awareness of the specific obligations that should govern their response. Together, these data indicate the need for procedures that require all managers to at least notify the relevant specialist units in their organisations when a disclosure is made, at the earliest available opportunity, with a view to referring or sharing the crucial initial decisions about investigation. Assumptions by frontline managers that they can or should investigate the matter alone, or seek to avoid the involvement of others unless problems arise, are only occasionally likely to be safe.

A similar query arises in relation to the very low satisfaction expressed in respect of external watchdog or investigation agencies (that is, integrity agencies). Clearly, these agencies do not currently enjoy much confidence from internal witnesses, and Table 8.2 indicate that they also do not enjoy strong confidence from agency case-handlers and managers. In cases ( $n = 112$ ) in which case-handlers and managers had experienced the involvement of external agencies in dealing with alleged reprisals against whistleblowers, 40 per cent felt the external agencies had not handled the matter well, with another 40 per cent

feeling the external agencies had handled the matter only ‘somewhat’ well. Only 20 per cent felt external agencies had handled it very or extremely well. Whereas some distance from the incident appears to favour quality investigations, it also appears that too much distance from the issues involved poses a difficult problem, which is usually the case for integrity agencies in terms of direct familiarity and the timeliness of involvement.

A more discordant result from the data is the relatively high satisfaction that internal witnesses had with investigations conducted by the CEO. The high levels of satisfaction with the CEO dealing with the report—which contrast with the views of case-handlers and other managers as to appropriateness—might similarly be explained by the internal witness seeing this as an indication of how important the organisation feels his or her concern to be. It also likely that notwithstanding the risks discussed above, in which a CEO becomes involved early and decisively in a whistleblower’s favour, this can short-circuit a variety of potential real and perceived reprisals. The same can be true if the matter is dealt with directly in the first instance by the employee’s supervisor. Nevertheless, the risks remain that if the result is not immediately favourable, the consequences for a well-meaning whistleblower can also be dire. One question becomes whether the potential advantages of decisive management intervention can be achieved by other means—for example, in the manner in which support is provided to whistleblowers, without needing to rely so heavily on CEOs or immediate supervisors to conduct the investigation themselves.

On a similar note, the perceived adequacy of internal investigations can be influenced by the fact that those responsible for investigation also have other roles—including a responsibility to provide support to those involved. As reviewed in more detail in Chapter 9, only 162 (54 per cent) of the 304 agencies that responded to the agency survey indicated they had procedures for identifying internal witnesses who needed ‘active management support’ during or after an investigation. When they did have procedures, the qualitative detail confirmed that it often fell to investigators to initiate or provide this support. For example, one agency commented: ‘[The] investigator would explain the process, [and] invite [the] internal witness to have a support person present at meetings/interviews.’ Another stated that ‘people needing support are also identified in the investigation process’, while another stated that the people involved could seek ‘support from the investigating officer’; another stated that assessing the need for support was ‘part of [the] normal investigation’.

While these responses indicate that agencies understand the stress associated with participating in an investigation as an internal witness or interviewee, it also demonstrates the central role investigators play in the overall management of the people involved. In other words, not only do certain individuals in agencies—often managers—receive reports and conduct the investigation, they

often have the responsibility to assess whether an internal or a witness requires support, and to provide it. Moreover, the data suggest that often they are the only people expected to ensure this occurs. The issue of support provided to internal witnesses is dealt with more fully in Chapter 9, but these results indicate that, like CEOs and other senior managers, many other types of investigators also have potentially conflicting roles. Keeping an internal witness happy and investigating their disclosure in a professional and impartial manner are not always compatible objectives. These data therefore reinforce the general issue of how investigation capacities can be institutionally configured so as to reduce or remove the effects of possible conflicts, as well as the need for basic training, to be discussed below.

## External investigators

As shown in Table 8.1, additional information was provided by more than 100 agencies in the agency survey about the use of external investigators. Almost one-third of agencies described using external contractors or consultants with human resource, legal or other investigative backgrounds, while about another 10 per cent used external government agencies such as police, ombudsmen or state corruption commissions. Of particular interest was the relatively frequent practice of drawing on an established panel of contract investigators.

Decisions regarding who conducts an investigation on behalf of the agency depend on criteria of complexity, sensitivity and whether the investigation requires specialist knowledge held outside the agency. Agencies explained that the nature of the alleged wrongdoing often dictated who conducted the investigation. For example, one agency mentioned specific 'contract investigators for discrimination, harassment and major policy breaches' and another a 'security firm to investigate a breach of a computer system', while a third used a company to investigate Workcover claims. In a further example, a respondent from one large department used specialist investigators who would be called on if this were ever necessary to deal with matters of child abuse. In other cases, 'consultants recommended by an integrity agency and/or recognised as qualified investigators' were used. The police and law firms were also mentioned for serious or criminal matters; former police officers appeared to be used because of their solid background in criminal investigation.

This frequent use of external investigators highlights a different range of issues. As can be seen, professional skills and capacity are less likely to be an issue, because, especially where contracted, the purpose of contracting the firm is to access these skills. Similarly, the use of external investigators is likely to achieve the desired qualities of distance and objectivity and to escape conflict between investigation and other organisational roles, such as management action and employee support. External contractors are also available to smaller agencies that could otherwise struggle to meet investigation needs in-house.

The involvement of an external investigator, however, relies on internal management action to identify the disclosure and initiate the investigation. When employee reports of wrongdoing raise issues that are potentially sensitive or embarrassing to the organisation, there is an inevitably increased risk that external resources will not be accessed, even if they might be in other circumstances. Further, if in many agencies it falls to investigators to become involved in internal witness support, this role is less likely to be fulfilled by external investigators engaged simply to complete the investigation task. Consequently, in some organisations, the use of external investigators could indicate that no-one is providing this support. These risks can increase the need for external integrity agencies to take a more active role in ensuring that some organisations are providing adequate support, as well as the relevance of other findings in Chapter 9.

## **Training and qualifications of investigators**

Training in investigation can be obtained through prior professional training—for example, as a detective in police work, forensic accounting training among finance professionals, grievance resolution training among human resource professionals and applied legal experience. Training can also occur through professional investigative qualifications (graduate certificates) offered by tertiary institutions such as Charles Sturt University, the University of Western Sydney and the TAFE level ‘Certificate IV’ in fraud investigation. Short courses, training sessions and awareness raising in administrative investigation are also available through some integrity agencies. All of these training options, and more, were mentioned in responses to the agency survey. These data make it clear that a wide variety of training and education resources are available to public sector organisations and their staff.

The important questions relate to how many agencies avail themselves of this training and how many case-handlers and managers dealing with whistleblowing issues have the benefit of it. Table 8.4 shows how organisations responded to the agency survey question ‘What training does your agency provide or require for staff who investigate reports of wrongdoing?’. Among the options given, ‘professional training’ was defined as ‘training accredited as contributing towards a qualification on criminal or administrative investigations, or formal training courses provided or funded by the agency’.

These results give real cause for concern. They are not clear-cut, as some agencies indicated a mixture of options, including professional training for some staff, only informal or ‘on-the-job’ training for others and ‘no particular training’ for others. Only one-quarter of agencies, however, provided or required professional training for any of their staff. Since professional training was specifically defined in terms of an accredited qualification, the range of training modalities included in ‘informal/on-the-job training’ could be very wide, including one-day seminars

or information sessions, as well as learning from colleagues or literally 'learning as you go'. On the positive side, respondent agencies could also have included the high-quality training provided by integrity agencies under this 'informal training'. If so, these staff could still have good foundational information. Nevertheless, the fact that such a low proportion of agencies indicated that they had any investigation staff who were professionally qualified, and that the single largest group of agencies indicated they neither provided nor required any training whatsoever, is great cause for concern.

In order to achieve a more detailed picture, case-handlers and managers in the case study agencies were also asked for information on their level of training. 'Professional training' was here defined as 'accredited training as contributing towards a university or TAFE qualification, or formal training courses provided or funded by the agency'. A distinction was also made between professional training 'prior to taking up my current role' and 'once I took up my current role'. Table 8.5 shows the proportion of respondents who had received each of the eight possible combinations of types and sources of training.

**Table 8.4 Training provided or required by your agency for staff who investigate reports of wrongdoing (agencies)**

Level of training	% (n)
No particular training	39.4 (117)
Informal/on-the-job training	35.0 (104)
Professional training	9.8 (29)
Mixture of professional and other training (including none)	15.8 (47)

Source: Agency survey: Q17 (n = 297).

**Table 8.5 Types of training for managers and case-handlers**

	No particular training	Informal/on-the-job training	Professional training before taking up current role	Professional training at agency after taking up current role	% (n)
1	Yes				24.4 (188)
2		Yes			42.8 (330)
3			Yes		10.9 (84)
4				Yes	11.0 (85)
5		Yes	Yes		2.6 (20)
6			Yes	Yes	3.9 (30)
7		Yes		Yes	2.1 (16)
8		Yes	Yes	Yes	2.3 (18)
					100 (771)
	24.4% (188)	49.8% (384)	19.7% (152)	19.3% (149)	

Sources: Case-handler and manager surveys: Q22 (n = 828, missing data n = 57).

In general, as will be seen through the next two chapters, these case study agencies had more developed systems and procedures for dealing with whistleblowing than other agencies. Nevertheless, even in these agencies, these results give continuing cause for concern. Indeed a large number of case-handlers and managers (24 per cent) had no particular training at all. Agencies relied

heavily on informal training, which was the only source of training for 43 per cent of respondents. Thirty-three per cent of respondents had experienced professional training: 14 per cent before taking up their role, 13 per cent after taking up their role and 6 per cent both before and after taking up their role.

Given that case-handlers and managers responded to this survey, it was possible that any shortage of training was concentrated among certain types of respondents—for example, managers—and that those with more training were also those called on more regularly to deal with whistleblowing cases, such as the staff of internal investigation units. If so, then any shortage might not have such dire implications. Accordingly, Table 8.6 examines the level of training of those respondents employed in the internal investigation units most frequently used to deal with employee reports. The question ‘Do you work, or have you worked, in any of the following [internal/investigation] units or roles?’ was analysed with reference to the level of training, including only those currently employed in these two types of nominated units. Percentages of the different levels of training are calculated according to the total number of respondents working in such units.

**Table 8.6 Level of training of staff in internal investigation units**

Level of training	Unit	
	Internal audit/fraud/ investigation/ethics (n = 81)	Human resources/equity/merit (n = 72)
No particular training	24.3% (20)	18.0% (13)
Informal/on-the-job training	33.3% (27)	48.6% (35)
Professional training before taking up current role	14.8% (12)	6.9% (5)
Professional training at agency after taking up current role	11.1% (9)	8.3% (6)
Professional (before or after) plus informal training	16.0% (13)	18.0% (13)
	100% (81)	100% (72)

Sources: Case-handler and manager surveys: Q2 and Q22.

Unfortunately, the results in Table 8.6 tend to worsen rather than improve the picture. These data are comparable with the overall results for all case-handlers and managers and reveal a surprisingly low level of training among staff in internal investigation units. Human resource units were more likely to rely on informal training than internal audit, fraud, investigation or ethics units; and, most surprisingly, these units were more likely than human resource units to comprise staff without any specific training at all. That a high percentage of internal investigation unit staff are not professionally trained, based on these data, is a concern, given that they are the most likely to be given the job of dealing with whistleblowing incidents, and with more complex or sensitive incidents.

Overall, it becomes hard to avoid the conclusion that even in the case study agencies, internal investigations and complaint handling are not seen as complex

professional skills requiring appropriate training. The results suggest that a thorough audit is needed of investigatory expertise, training and experience, with the aim of understanding the skills and qualifications of investigators in this important area of administrative investigation. This audit should directly inform the training requirements of administrative investigators—including managers who are assigned this task on an ad hoc basis, but, as a priority, those with more full-time responsibility for investigations and case-handling.

What are the current impacts of this lower than expected level of training? The next section will examine whether there is a direct relationship between investigatory capacity and desirable outcomes from whistleblowing, including employee confidence in the ability of organisations to respond effectively to reports. Before moving to this analysis, it is possible to examine whether any relationship exists between current training levels and the experiences and perceptions of case-handlers and managers themselves.

In order to compare levels of training with other measures, respondents to the case-handler and manager surveys who circled only one source of training or a combination of informal and professional training (either before or while performing the role) were used to generate five levels of training—namely: no training; informal training; professional training before beginning role; professional training after beginning role; and a combination of informal and professional training (levels of training from '0' to '4'). Those who circled that they currently or had previously worked in relevant organisational units were excluded from the analysis to ensure that any significant differences in attitudes or knowledge were less likely to have been influenced by other organisational experience and more likely to result from their distinct levels of training. In practice, this meant that the respondents being compared involved fewer full-time case-handlers and more managers.

First, these respondents were asked how well they felt their training prepared them for dealing with cases of employee reports of wrongdoing, on a scale of 1 (not at all well) to 5 (extremely well). As shown in Table 8.7, a significant difference between training regimes was found ( $F(4651) = 188.16$ ,  $p = 0.000$ ,  $\eta^2 = 0.54$ ). Those with professional training before taking up their role felt most prepared, as did those who had professional training before and since starting their role. It is likely that this group comprised several former police officers since this is the group most likely to have had previous training in investigation. Those with no training, not surprisingly, felt the least prepared.

**Table 8.7 Level of training by quality of training ('How well did your training prepare you for dealing with these cases?')**

Level of training	Quality (mean)	Std error	0	1	2	3	4
None (0)	1.51	0.06		**	**	**	**
Informal (1)	2.92	0.04	**		**	**	**
Professional before (2)	3.60	0.07	**	**			
Professional during (3)	3.50	0.08	**	**			
Informal and professional combined (4)	3.46	0.07	**	**			

\*  $p < 0.05$ \*\*  $p < 0.01$ 

Source: Case-handler and manager survey: Q22, Q23.

These results confirm that the level of training is not merely an abstract or academic issue. It appears to matter in terms of how well case-handlers and managers themselves feel they are equipped to deal with whistleblowing cases. This resonates with the findings from the previous chapter that even when managers are broadly positive in their outlook towards whistleblowing, they are also often conscious of their low awareness of specific obligations when really confronted with it.

The level of training can also influence the attitudes that case-handlers and managers have towards whistleblowers and their reports, as well as their understanding of the risks and options for managing whistleblowing. Table 8.8 shows that, when asked to agree or disagree with the statement 'Most employee reports are wholly trivial (no information merits investigation)', those without training were significantly more likely to agree than those who had professional training before taking up their role, with or without additional training on the job ( $F(4688) = 4.22$ ,  $p = 0$ ,  $\eta^2 = 0.02$ ). This result indicates that those without the insights and knowledge conferred by prior professional training and experience could be more inclined towards more harsh, stereotypical views of whistleblowers. If so, the high proportion of under-trained investigators is likely to impact on the manner in which investigations are conducted and the ability of investigators to help manage the individuals involved to a positive conclusion. In addition to skills acquisition, training can be useful in that it can increase recognition of the value and legitimacy of whistleblowing for the improvement of the organisation.

**Table 8.8 Level of training by agreement with statement: ‘Most employee reports are wholly trivial (no information merits investigation)’**

Level of training	Agreement with statement (mean)	Std error	0	1	2	3	4
None (0)	2.29	0.06			*		*
Informal (1)	2.12	0.04					
Professional before (2)	1.96	0.09	*				
Professional during (3)	2.00	0.09					
Informal and professional (4)	1.95	0.08	*				

\*  $p < 0.05$ 

Sources: Case-handler and manager surveys: Q27a.

A similar result was found when examining case-handlers and managers' perceptions of how those who report wrongdoing are treated by management. As shown in Table 8.9, respondents were asked how well they thought employees who reported wrongdoing were treated by management in their organisation. On a scale from 1 to 5, 1 indicated 'extremely well' and 5 indicated 'extremely badly'. A statistically significant difference in the belief about management treatment was found according to the level of training ( $F(4,697) = 5642.88$ ,  $p = 0.000$ ,  $\eta^2 = 0.03$ ). Those without training were more inclined to believe that management treated whistleblowers poorly than those with professional training, again suggesting that those without the insights and knowledge of training had a more stereotypical, negative view of the whistleblowing process. Perhaps because they also then become exposed to more cases, those with more training appear to have a slightly more accurate assessment of the overall results suggested in Chapter 5 and a more positive outlook of, or confidence in, the ability of organisations to manage whistleblowing well.

**Table 8.9 Relationship of level of training with perceptions of how employees who report wrongdoing are treated by management**

Level of training	Perception of treatment (mean)	Std error	0	1	2	3	4
None (0)	3.19	0.07			*	*	**
Informal (1)	2.96	0.05					
Professional before (2)	2.80	0.10	*				
Professional during (3)	2.80	0.10	*				
Informal and professional (4)	2.74	0.10	**				

\*  $p < 0.05$ \*\*  $p < 0.01$ 

Sources: Case-handler and manager surveys: Q32.

These analyses suggest that a lack of training in investigation is related to small, but statistically significant differences in attitudes to whistleblowers and the management of reports. Those with no specific professional training feel less well prepared to investigate cases and are slightly more inclined to see reports as trivial compared with those with professional training. A general conclusion

is that professional training for those dealing with and investigating reports will contribute to higher skills and more constructive attitudes towards reporters and the agency's management of whistleblowers.

## Comparing investigation practices across agencies

The preceding sections suggest that investigation capacity is lower than desirable in many agencies and confirms that issues of capacity are important. Is there also clear evidence that these issues make a difference in terms of other outcomes—for example, that when investigation capacity is higher, this is contributing to more favourable reporting climates?

To answer this, comparisons of a number of agencies were carried out based on their differing levels of 'investigatory capacity'. A proxy measure of investigatory capacity was generated from a composite of several different measures from the employee survey and the case-handler and manager surveys. Only the 12 case study agencies for which there was sufficient data from these surveys could be included. The data used to form this composite measure were: the percentage of agency employees from the employee survey who reported that their complaint was investigated; the extent to which respondents to the case-handler and manager surveys in the agency felt their level of training prepared them for dealing with whistleblowing reports; and the agencies' mean scores on an 'overall perception' scale developed for this analysis, using the results from three further questions from the case-handler and manager surveys ('Overall, how committed do you think your organisation is to dealing respectfully and properly with employees who report wrongdoing?' [Q59]; 'How successful do you think your organisation is in encouraging employees to voice concerns about perceived wrongdoing?' [Q61]; and 'Based on your experience, how likely would you be to advise employees to report or provide information about wrongdoing in your organisation?' [Q62]).

The proportion of investigated complaints (as a percentage of agency participants) was weighted most heavily in the ranking, based on the assumption that a lower proportion of investigated reports signified either less ability or willingness to investigate. The next heaviest weighting was given to the mean score on the 'overall perception' scale and the perceived quality of training was considered last.

The resulting composite proximal measure can be thought of as a guide only. It divides the 12 agencies into two groups, reflecting the relative quality of investigative capacity rather than a definitive measure. The two groups comprise those agencies with 'average' and 'slightly better than average' investigatory capacities, rather than agencies that are clearly 'bad' or 'good'.

These two groups were then compared, via Chi-square, on a number of outcome measures:

- those agencies' inaction rates in response to serious observed wrongdoing
- the proportion of respondents who did not report, who gave a belief that 'nothing would be done' as a reason (employee survey: Q35k)
- the reporting rate in response to observed wrongdoing (employee survey: Q26)
- the proportion of reporters who said that they would report again (employee survey: Q34).

Given the nature of the measure, large differences were not anticipated. Further, it was not necessarily to be expected that employees would directly consider issues such as the likely nature and quality of the investigation when calculating whether to report. When all employee survey respondents were asked whether they believed that 'management carefully investigates employee concerns about wrongdoing', a substantial proportion (42 per cent) neither agreed nor disagreed, suggesting simply that they probably did not know what investigation responses usually followed employee reports in their organisation. Slightly less than 40 per cent of respondents agreed and approximately 20 per cent disagreed or strongly disagreed. A similar limitation is suggested if the above measure of the case study agencies' investigatory capacity is used to compare the strength of particular reasons why employees said they reported. An important reason was the confidence of reporters that their 'report would help to correct the problem' (employee survey: Q27e). There was, however, no significant difference in the level of importance given to this reason by reporters in those agencies with only 'average' investigatory capacity (mean = 3.09) when compared with reporters in agencies with 'slightly better than average' capacity (mean = 3.07;  $F(1,633) = 0.08$ ,  $p = 0.78$ ). This suggests that employees' beliefs about whether or not organisational improvement is likely to follow from their report, as a motivating factor, are formed independently of any evaluation they might make about the likely quality of investigations—assuming they are in a position to judge.

These limitations could explain the results from the first and second comparisons listed above, which showed no significant difference between the agencies. The inaction rates of the two groups of agencies were calculated in the manner outlined in Chapter 2, by identifying the proportion of employee survey respondents who observed 'very' or 'extremely' serious wrongdoing but did not report it and did not deal with it themselves, without anyone else having reported it. This comparison did not identify a statistically significant difference ( $\chi^2(1) = 0.82$ ,  $p = 0.37$ ). Similarly, there was no significant difference between the two groups of agencies in terms of the proportion of respondents who declined to report the reason why they believed nothing would be done ( $\chi^2(1) = 1.7$ ,  $p = 0.20$ ).

While this could initially suggest that differences in investigatory capacity had no observable impact on reporting behaviour, the two remaining comparisons

did show a positive result. In agencies with a 'slightly better than average' investigatory capacity, a higher proportion of employees who observed wrongdoing went on to report the most serious instance (49.9 per cent) than in agencies with an 'average' capacity (44.1 per cent). This was a statistically significant difference ( $\chi^2(1) = 4.55$ ,  $p = 0.03$ ,  $\eta^2 = 0$ ).

Finally, an analysis was performed to find out whether those who reported said they would be more likely to report again, in agencies with higher capacity. This is perhaps the most meaningful analysis, given that it tests for an association using the views of respondents who are known to have had firsthand experience of the investigatory capacity of the organisation. On a scale of 1 to 5, the mean response in agencies with 'slightly better than average' capacity (mean = 4.22) was significantly higher than in the agencies with 'average' investigatory capacity (mean = 4.01;  $F(1650) = 6.85$ ,  $p = 0.009$ ). In other words, those with experience of 'slightly better than average' investigatory processes indicated that they would be more likely to report again. For the same reason that these data were seen as important in Chapter 5, these results were an indicator of how a higher level of capacity was likely to flow back into attitudes to reporting held more widely across the organisation.

Each part of the process of encouraging staff to report and then managing reports of alleged wrongdoing must work well. Not only do staff members need to feel comfortable about reporting, their reports need to be dealt with properly by managers and others to whom they report. Analysis in earlier chapters showed that staff members find it difficult to accurately assess what the real management response will be, even when they have high trust that it will be positive. Their likely knowledge of investigation practices and standards, before the event, is more limited again. Fundamentally, even if 'first-time' reporting behaviour is likely to be based more on trust than experience, the confidence of employees that an effective organisational response will follow does appear to be impacted on by the capacity to conduct investigations objectively, competently and professionally. Exactly how the benefits of stronger investigatory capacity flow through to the awareness of staff and their increased propensity to report is a matter for further research. This analysis has nevertheless indicated that stronger investigatory capacity can make a difference—not simply in terms of correct substantive outcomes, but in terms of the broader reporting climate within the organisation.

## Discussion and conclusions

A properly investigated report is the only sound basis for taking institutional action with regard to an individual found to be responsible for wrongdoing or for effecting organisational change where systems, governance and processes are found to be at fault. The manner in which employee disclosures about

wrongdoing are investigated will, from the outset, have an impact on whether there is a satisfactory result. Poor investigations can lead to protracted and expensive cases, give cause for further complaint and conflict, contribute to the many stresses on individuals and the organisation and bring about a loss of public confidence in the agency's ability to 'investigate its own'. Debate often arises about whether investigations of misconduct or wrongdoing can be conducted appropriately by individuals or units within the agency that is the subject of the complaint.

Notwithstanding this debate, by far the majority of investigations into reports are conducted internally—and often with success. The aim of this chapter has been to explore in greater detail whether there is scope for investigative practice to be improved, so as to help build more robust, well-recognised systems for dealing more effectively with whistleblowing reports in a higher number of cases.

The chapter has examined who conducts investigations of reports of wrongdoing and what training they have, across a wide pool of public agencies. It has also compared their level of training with other measures such as internal witnesses' satisfaction with the progress and outcome of the investigation of their report. A notable result was the inconsistency in the level and type of training of investigators, with very low levels of training in circumstances in which a much higher level should reasonably be expected, and an awareness of these inadequacies on the part of many of the staff involved.

It is possible that these results can be explained partially by the wide variation in roles and responsibilities included under the broad grouping of 'case-handlers and managers' and others who conduct investigations. It is also clear that decisions about who should conduct an investigation, and how, are grounded in a range of agency-specific issues, including the size of the agency and the number and nature of reports it deals with. The current state of affairs, however, could also be explained by the fact that development of practice and procedure in administrative investigations is still in relative infancy. The recognition of the need for coherent, comprehensive and professional investigation approaches has, until relatively recently, been limited to a range of specific, segmented fields. Reliance on former police as criminal investigators might not necessarily translate into quality investigations of non-criminal issues. Human resource officers familiar with investigations of personnel and workplace grievances, equal opportunity, bullying or harassment might not recognise the public interest components of disclosures about defective administration or professional negligence. Specialist accounting and auditing consultants might have expertise in cases of fraud or breach of security, but be ill equipped to identify, substantiate or suggest answers to internal policy breakdowns. Generalist managers tasked

with guiding the organisational response might have any of these areas of expertise, or none of them.

For these reasons, a new model of investigation is emerging distinct from criminal investigations. Manuals are being developed—for example, by the NSW Ombudsman (2004b)—that provide guidance for how administrative investigations should be conducted. The results presented in this chapter contribute substantially to the developing literature on these types of investigations. As suggested in the body of the chapter, there is a need for a thorough audit of investigatory expertise, training and experience to complement this information about the investigation of whistleblower reports. Irrespective of the fact that this is a developing field, however, it is clear that to improve practice, attaining certain levels of training is essential—particularly given the evidence that the significance of professional training lies not only in technical skills but in improved understanding of whistleblowing as a total process.

In considering the scope for the improvement of investigatory expertise, it should be recognised that many public sector organisations require this sort of capacity for reasons other than for investigations arising from a whistleblowing incident. Indeed, they could already possess it. For example, most large public sector agencies regularly investigate breaches of codes of conduct and other workplace matters, while any agencies whose functions include licensing need to investigate breaches as a part of their statutory function. Organisations that have other areas of investigatory capacity should be able to swing that capacity across to the effective investigation of whistleblower reports.

While this chapter's finding about low levels of investigatory expertise, training and experience have wider ramifications than just whistleblowing, the need to deal well with employee disclosures can, and should, nevertheless provide a catalyst for the development of more expertise. Internal reporting of wrongdoing occurs in a more fraught social context than many other subjects of criminal and administrative investigation, such as non-compliance. Investigation skills must be addressed to the permeability of the boundaries between personal grievances and matters of broader organisational or public integrity. Distinguishing between the elements of disclosures that raise public interest elements and those that spring from an unhappy workplace, and ensuring all are dealt with appropriately, is a challenge for any agency. These challenges must be met head on, recognising that in many whistleblowing situations, the workplace has become a contested space in which there are differences of opinion, work standards, power relationships, professional judgment and ethical standards. Whistleblowing also imposes obligations on agencies to conduct and manage investigations in ways that recognise their special duty of care towards their informants and witnesses, being also their own employees—as will be discussed further in the next chapter.

Finally, the chapter showed a number of relationships between the existing 'investigatory capacity' of agencies and other outcomes, including general attitudes of managers and case-handlers to whistleblowing, confidence in the ability to prevent or contain management mistreatment of whistleblowers and the willingness of employees to report. While more study is needed into the role of investigatory capacity in encouraging employees to feel more comfortable about reporting, these results confirm that addressing weaknesses in capacity is a fundamental element of ensuring that staff members speak up about their concerns.

As discussed in Chapters 1 and 2, and again in the previous chapter, an overall conclusion from this research is the finding of a high level of staff and management commitment to professional management of whistleblowing reports. The question remains how this commitment can be more routinely translated into practice. There is a clear need to close the gaps between broad principles and practical realities.

The results from this chapter reinforce the pivotal importance of approaches taken by public sector managers to prevent and remedy problems on the ground. The need for better systems and procedures begins with efforts to ensure any investigation can be carried out competently by the organisation or passed appropriately outside the organisation for investigation. There is special need for effective resources to be devoted to investigation by the organisations involved. Areas shown as requiring more attention include the training of investigators, the professionalisation of investigation practices, clearer differentiation between investigation roles and other institutional roles and mechanisms for ensuring that complainants are dealt with sensitively and kept informed of the progress and outcome of the investigation. The data also indicate a need for a better relationship between frontline managers and specialist units in the way reports of wrongdoing are notified and referred; and a better relationship between agencies and integrity agencies to overcome the problems of distance and time that, on this evidence, can hamper the usefulness of the latter. These reforms will provide the foundation for developing excellent practice in the investigation of employee reports and a basis for reflection on the developing practice of internal investigations more generally.

## ENDNOTES

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